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Initial report of the Czech Republic* on the implementation of the International Covenant on Civil and Political Rights for the period 1993-1999

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INITIAL REPORT OF THE CZECH REPUBLIC ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS FOR THE PERIOD 1993-1999

I. GENERAL

1. The Covenant's Place in the Legal System of the Czech Republic

1. The Czech Republic presents the Initial Report in accordance with the provisions of Article 40, Paragraph 1, of the International Covenant on Civil and Political Rights; the report covers the period between January 1, 1993, and November 30, 1999, in accordance with General Guidelines No. CCPR/C/66/GUI/Rev. 1.

2. The Czech Republic was established on January 1, 1993, as one of the two successor states of the Czech and Slovak Federative Republic (hereinafter "CSFR"). The International Covenant on Civil and Political Rights (hereinafter "the Covenant"), of December 16, 1966, was signed by the Czechoslovak Socialist Republic (hereinafter "CSSR") on October 7, 1968, in New York. The Covenant took effect in CSSR on March 23, 1976 (promulgated in a communication of the Ministry of Foreign Affairs under No. 120/1976 of Coll.). By a notification of February 22, 1993, addressed to the Secretary General of the United Nations (hereinafter "UN"), the Czech Republic succeeded, as of January 1, 1993, into the obligations arising from the Covenant for the former Czech and Slovak Federative Republic, including the declaration pertaining to Article 48, Paragraph 1, of the Covenant. The declaration pertaining to Article 41 was repealed as of March 12, 1991. The reservation made as of June 7, 1991, with respect to reservations of the Republic of Korea to Article 14, Paragraphs 5 and 7, and Article 22 of the Covenant has also remained effective.

3. By a notification of February 22, 1993, addressed to the UN Secretary General, the Czech Republic also succeeded, as of January 1, 1993, into the obligations arising for the former Czech and Slovak Federative Republic from the First Optional Protocol to the Covenant. CSFR acceded to the First Optional Protocol as of March 12, 1991. The First Optional Protocol took effect there on June 12, 1991 (promulgated in a communication of the Ministry of Foreign Affairs under No. 169/1991 of Coll.). However, the Czech Republic is not a signatory of the Second Optional Protocol.

4. In accordance with Article 10 of the Constitution of the Czech Republic (hereinafter "the Constitution"), ratified and promulgated international treaties on human rights and fundamental freedoms binding on the Czech Republic are directly applicable and prevail over the law. These treaties can be referred to directly before appropriate authorities, particularly courts; in the event of a discrepancy with the law, these treaties (including the Covenant) prevail.

5. The Czech Republic is a signatory of a number of international treaties on human rights, namely:

(a) International Convention on the Elimination of All Forms of Racial Discrimination (No. 95/1974 of Coll.);

(b) International Covenant on Economic, Social and Cultural Rights (No. 120/1976 of Coll.);

(c) Convention on the Elimination of All Forms of Discrimination against Women (No. 62/1987 of Coll.);

(d) Convention on the Rights of the Child (No. 104/1991 of Coll.);

(e) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (No. 143/1988 of Coll.);

(f) Slavery Convention (No. 165/1990 of Coll.).

6. The Czech Republic is also a signatory of a number of instruments of the Council of Europe, particularly the Convention on the Protection of Human Rights and Fundamental Freedoms (No. 109/1992 of Coll.) in terms of its protocols, the European Social Charter, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (No. 9/1996 of Coll.) in the wording of its protocols, and the Framework Agreement on the Protection of Ethnic Minorities (No. 96/1998 of Coll.).

7. According to the provisions of Article 40, Paragraph 1, of the Covenant, the Czech Republic should have submitted the Initial Report by December 31, 1993. Given general shortcomings and deficiencies in the preparation of reports on the fulfilment of commitments and obligations arising from international treaties on human rights, the Government of the Czech Republic has established, by its resolution No. 809 of December 9, 1998, the Council for Human Rights of the Government of the Czech Republic (hereinafter "the Council") to act as an advisory and co-ordinating body of the Government responsible for monitoring domestic compliance with international commitments of the Czech Republic in the field of human rights and fundamental freedoms.

8. The Council is presided by the Government Commissioner for Human Rights. The position of the Commissioner for Human Rights was established by Resolution of the Government No. 579/1998, dated September 9, 1998. The Commissioner's mission is to act, within the purview of one of the Deputy Prime Ministers (Chairman of the Legislative Council), as an initiative and co-ordinating body of the Government responsible for monitoring and assessing the situation and level of human rights in the Czech Republic. The Government has empowered the Council to ensure, through the Government's Commissioner for Human Rights, the fulfilment of its commitments arising from international instruments, and to prepare and submit, in co-operation with the Ministry of Foreign Affairs, reports required by control mechanisms incorporated into such international instruments to relevant international organisations (UN, Council of Europe), unless such tasks have been entrusted to other state administration authorities.

9. Another task of the Council and its chairman, i.e. the Commissioner for Human Rights, is to submit to the Government, through the Deputy Prime Minister/Chairman of the Legislative Council, information, proposals and position papers regarding the compliance with commitments arising from instruments binding on the Czech Republic or which it intends to accede to. Every year by the end of March, the Commissioner, together with the Deputy Prime Minister/ Chairman of the Legislative Council, submits an annual report describing the human rights situation in the Czech Republic in the previous year to the Government. The first such report was submitted to the Government on March 31, 1999.

10. The structure of the Council permits an active participation of the general public in the protection of human rights: it comprises an equal number of representatives of state administration authorities at the level of deputy ministers and of representatives of the general public. At the moment, the Council has 21 members, including the chairman. Furthermore, the Council has established eight sections dealing with specific issues in the field of human rights. The sections submit proposals to the Council as an advisory body of the Government. There are the following sections:

(a) against manifestations of racism

(b) for rights of foreigners

(c) for civil and political rights

(d) for the rights of the child

(e) for equal opportunities of men and women

(f) against torture and other inhuman treatment

(g) for social, cultural and economic rights

(h) for the education toward human rights

General Legal Framework of the Protection of Human Rights

11. The Constitution of the Czech Republic was adopted on December 16, 1992. Article 1 reads as follows:

The Czech Republic is a sovereign, unitary and democratic law abiding state based on respect for the rights and freedoms of man and citizen.

12. Furthermore, Article 2 of the Constitution reads as follows:

(1) The people shall be the source of all the power of the State, and shall exercise it through legislative, executive, and judicial power bodies.

(2) A constitutional law may stipulate cases in which the people will exercise the above power directly.

(3) The power of the state shall serve all citizens and can only be applied in cases, within limits and in the manner stipulated by the law.

(4) Every citizen shall be free to do anything which the law does not forbid, and no one shall be forced to do anything which the law does not require.

13. The rights and freedoms set forth in the Covenant constitute a significant part of the Charter of Fundamental Rights and Freedoms (hereinafter "the Charter") which the Presidium of the Czech National Council, in its Resolution No. 2/1993 of Coll., proclaimed a part of the constitutional order of the Czech Republic (pursuant to Article 3 of the Constitution). The Charter introduces into the law most of the civil and political freedoms listed in the Covenant, as well as of the rights laid down in the International Covenant on Economic, Social and Cultural Rights. However, commitments and obligations arising from the Covenant are binding upon the Czech Republic even above the framework of what the Charter contains.

14. The implementation of the Charter is connected with the necessity to adopt new and accurate laws consistent with the Charter's spirit, as the fundamental rights and liberties laid down in the Charter require a multitude of legal provisions to be implemented. Since the incorporation of the Charter into the constitutional order of the Czech Republic, legal standards concerning human rights and fundamental freedoms and codified in material law and procedural law regulations of civil, criminal and administrative law (Civil Code, Civil Procedures Code, Criminal Code and Criminal Procedures Code, Administrative Procedures Code[1]) and other legal regulations have been continuously updated to reflect its implementation needs.

15. Nevertheless, certain articles of the Charter have not been sufficiently elaborated in specific legal acts, even in cases where the Charter expressly refers to the exercise of rights within limits set by law. The Czech Republic is aware of the legislative deficit and has been doing its utmost to remedy the situation.

16. The Charter prevails over the law; hence, all lower-level legal regulations must be in compliance with its provisions. Any discrepancies between provisions of the Charter and those of acts and regulations of a lower legal force are dealt with by the Constitutional Court.

17. According to Article 4 of the Constitution, fundamental rights and freedoms are protected by the judicial power. Courts are responsible for offering that protection in the manner stipulated by law. Only courts can make decisions regarding the guilt and punishment for criminal acts. The system of courts comprises the Supreme Court, the Supreme Administrative Court (not established yet), High Courts, Regional Courts and District Courts. The jurisdiction of courts and organisation of the judicial system are stipulated by law.[2] The judicial body responsible for protecting constitutionality is the Constitutional Court (established pursuant to Article 83 of the Constitution). The jurisdiction and organisational structure of the Constitutional Court are stipulated in the Constitution and by law.[3]

18. A key element insofar as the protection of human rights is concerned - and a key change compared to 1989 - is the independence of courts. When performing their duties, judges are independent. Judges of general courts are appointed by the President of the Czech Republic for an indefinite period of time; when making their decisions, they are bound by law. The judge's job is incompatible with that of the President of the Republic or a member of the Parliament, or any other public administration office. The act on courts and judges stipulates additional jobs and offices which the performance of the judge's duties is incompatible with.

19. Because of its independence on political parties and its authority to perform certain acts of judicial nature, the Department of the State Prosecutor[4] can also perform a certain role with respect to the protection of human rights. The Department of the State Prosecutor comprises the Supreme Office of the State Prosecutor and High, Regional and District State Prosecutor's Offices. The Department of the State Prosecutor acts as a public prosecutor, performing related duties as set forth in the Criminal Procedures Code, and also fulfils other tasks, if required to do so by law, e.g. by the Civil Procedures Code.

20. A particularly important role in the protection of human rights belongs to the Constitutional Court, which commenced its work as of July 1, 1993. It is composed of 15 judges appointed by the President of the Republic for a term of ten years. The Constitutional Court, whose primary mission is to oversee constitutionality in the Czech Republic, is a domestic law body. The control of constitutionality of legal provisions is exercised in the light of the constitutional order of the Czech Republic, particularly the Constitution itself and the Charter. However, this fact also brings the Constitutional Court to the application of international law, especially the special category of international treaties on human rights and fundamental freedoms in accordance with Article 10 of the Constitution, i.e. also the Covenant.

21. The protection of human rights and the fulfilment of commitments and obligations arising from the Covenant also fall into the purview of committees of both chambers of the Parliament of the Czech Republic, namely:

(a) the Petition Committee of the House of Deputies of the Parliament, which comprises two sub-committees, one for the application of the Charter of Fundamental Rights and Liberties, the other dealing with nationalities and ethnics.

(b) the Human Rights, Science, Education and Culture Committee of the Senate of the Parliament.

22. The lower chamber of the Parliament, i.e. the Chamber of Deputies, passed a Charter of law on the public protector of rights (ombudsman[5]). The current Government had included the establishment of the ombudsman's office into its Programme Declaration in 1998; however, it had to make concessions with respect to the scope of powers it had intended to vest upon the ombudsman, and drafted a Charter without any constitutional powers of the public protector of rights, although it had initially tried to grant the ombudsman a broader portfolio of powers by a constitutional law. This notwithstanding, the establishment of the ombudsman's office should significantly contribute to strengthening and improving the protection of citizens against any improper or incorrect action or treatment on the part of state administration authorities and institutions. The ombudsman's jurisdiction will extend particularly to ministries and other state

administration authorities having a nation-wide jurisdiction, subordinate administration authorities, district offices and towns exercising the jurisdiction of a district office, municipalities exercising their state administration duties, the Police of the Czech Republic, the Armed Forces of the Czech Republic, the Prison Guards Corps and the penitentiary facilities used for the purpose of detention, imprisonment, re-integration programs and medical treatment ordered by court decision.

II. IMPLEMENTATION OF INDIVIDUAL ARTICLES OF THE PACT

Article 1

1. Right to decide freely on State matters

23. As a democratic country, the Czech Republic is free to decide its political status and the course of its political, economic, social and cultural development. The free decision-making in matters of the Czech Republic is based on the Constitution.

24. Article 2 of the Constitution stipulates that the people shall exercise all the power of the state through legislative, executive, and judicial power bodies. According to Article 5, the political system is based on a free and voluntary formation and a free competition of political parties respecting basic democratic principles and rejecting violence as a means to further their interests. According to Article 6 of the Constitution, political decisions are based on the will of a majority expressed by a free vote; the decision-making by a majority is accomplished in such a way as to protect minorities. Article 9, Paragraph 2, of the Constitution stipulates that any change of essential particulars and characteristics of a democratic law abiding state is not permissible.

25. The legislative power is entrusted to the Parliament elected by democratic elections. The Parliament's lower chamber is the House of Deputies, the upper chamber is the Senate. The former comprises 200 deputies elected on the basis of principles of proportional representation for an office term of four years. The Senate has 81 senators elected on the basis of principles of a majority system for an office term of six years. A third of the senators is elected every two years.

26. The supreme executive power body is the Government which consists of the Prime Minister, Deputy Prime Ministers and Ministers. The Government is responsible to the House of Deputies. The Prime Minister is appointed by the President of the Republic; the President also appoints other members of the Government nominated by the Prime Minister. The Government is accountable to the Chamber of Deputies which can vote on confidence in the Government. The Prime Minister submits his or her resignation to the President of the Republic; other members of the Government submit their respective resignations to the President of the Republic through the Prime Minister.

27. The Government adopts its decisions as a collective body. A simple majority of all members of the Government is required to pass a resolution. The Government is authorised to issue decrees to implement a law, which must be in compliance and within limits of the law in question. Ministries, other administration authorities[6] and territorial (local) self-government

bodies can issue legal regulations on the basis of and within limits laid down by law, if they are authorised to do so by law.

28. The territorial unit on which the exercise of state administration is based is a district. The operation and jurisdiction of District Offices[7] are governed by law.

29. Territorial (local) self-government bodies also participate in exercising the executive power in the framework of the so-called delegated jurisdiction. As a result of the application of the self-government principle in the Czech law, the state is no longer the exclusive bearer of the public power. According to Article 100, Paragraph 1, of the Constitution, territorial (local) self-governing units are territorial communities of citizens that are entitled to self-government.

30. The basic territorial (local) self-governing unit is a municipality. The municipality is independently managed by a municipality council as a public law corporation which can own property and operate according to its own budget. The state is allowed to interfere with activities and operations of territorial (local) self-governing units, including municipalities, only when such an interference is required to protect the law and only in the manner set forth in the law. Members of municipal councils are elected for an office term of four years. Within their respective jurisdictions and powers, municipal councils are allowed to issue generally binding decrees.[8]

31. In accordance with provisions of Article 99 of the Constitution, de jure regions were established on the basis of Constitutional Act No. 347/1997 of Coll. as of January 1, 2000, which represent high-level territorial self-governing units. However, their *de facto* establishment is subject to additional implementing legislation. The Government submitted relevant proposals to the Parliament for discussion in November 1999.

32. The judicial power is exercised by courts on behalf and in the name of the republic (see the "General" part).

2. Right of the nation to dispose of its natural wealth and resources

33. There do not exist any circumstances preventing the Czech Republic from disposing of its natural wealth and resources without prejudice to any obligations arising out of international economic co-operation based on the principle of mutual benefit and international law. As such circumstances do not exist, other rights protected by the Covenant are unaffected as well.

3. Support to the enforcement of the right to self-determination

34. Relations of the Czech Republic with other countries follow the principles of peaceful co-existence and economic and cultural co-operation. The foreign policy of the Czech Republic is based on respecting the sovereignty of other states, integrity of state frontiers, human rights and fundamental liberties, the right of every country to decide its own destiny, as well as the right of nations to self-determination.

35. The Czech Republic does not have any territorial claims vis-à-vis its neighbours, and vice versa. It is not responsible for administering any non-self-governing or other territories that it

would have in custody. Its relations with the second successor country, Slovakia, are free of conflicts, correct, friendly and since 1998 clearly of better-than-standard quality.

Article 2

1. Equal guarantees for every individual

36. As mentioned in Article 3 of the Charter, fundamental rights and freedoms protected by the Charter are guaranteed to

> *all people irrespective of their sex, race, skin colour, language, belief and religion, political or other opinions, national or social origin, appurtenance to a national or ethnic minority, property, birth or other status.*

37. The issue of guarantees against discrimination on sex grounds is described in detail in the text pertaining to Article 3. Specific guarantees against discrimination on racial grounds or for any other reasons are described in comments to Article 26.

38. A specific issue concerns the situation of foreigners which merits special attention in accordance with General Comment No. 15 (27) of the Committee. Article 42 of the Charter contains the following provisions:

> *(1) Foreigners in the Czech Republic shall enjoy human rights and fundamental freedoms guaranteed by the Charter, with the exception of rights accorded exclusively to citizens.*
>
> *(2) With respect to fundamental rights and freedoms accorded by the Charter irrespective of nationality or citizenship, the term "citizen" as used in the existing legislation shall denote every man.*

39. The fundamental rights and freedoms accorded by the Charter irrespective of nationality or citizenship include the right to life (Article 6), inviolability of an individual and his or her privacy, and prohibition of torture or other cruel, inhuman or degrading treatment or punishment (Article 7), guarantee of one 'spersonal freedom (Article 8), prohibition of forced labour or servitude (Article 9), right to retain human dignity, personal honour, good reputation, to protection against any unlawful interference into one 'spersonal or family life, and protection against any unlawful gathering, publication or other abuse of one 'spersonal data (Article 10), to inviolability of one 'shome (Article 12), to inviolability of one 'scorrespondence (Article 13), to freedom of movement and residence (Article 14), to freedom of thought, conscience or religious belief (Article 15), and to free manifestations, worship and practising of one's religion (Article 16).

40. Certain restrictions laid down in the first chapter (on human rights and liberties) of the Charter appear only in Article 11 which deals with the ownership. Basically, its second paragraph stipulates that certain assets may only be owned by citizens or legal entities having their seat in the Czech Republic, which, however, does not bear any relation whatsoever to the rights guaranteed by the Covenant. As to political rights, everybody - i.e. including foreigners -

is guaranteed the right to freedom of expression and to information (Article 17), right to petition (Article 18), right to assemble peacefully (Article 19) and right to associate peacefully (Article 20, Paragraph 1). However, only citizens of the Czech Republic are granted the right to establish political parties and movements and to associate in them (Article 20, Paragraph 2), to participate in the administration of public matters either directly or through freely electing their representatives (Article 21) and to oppose anyone attempting to remove the democratic order of human rights and fundamental freedoms established by the Charter (Article 23).

41. Article 24 of the third chapter of the Charter, which guarantees the rights of national and ethnic minorities, stipulates that the appurtenance to any national or ethnic minority may not cause prejudice to others, which also applies to foreigners. However, positive rights - the right to develop own culture, to recognise and receive information in the mother language and to associate in national or ethnic associations (Article 25), to be educated in one 'sown language and to use the same when dealing with official authorities, or to participate in resolving matters pertaining to national and ethnic minorities (Article 25, Paragraph 2) - apply only to citizens of the Czech Republic.

42. The fourth chapter of the Charter guarantees foreigners, for example, the right to associate in trade unions (Article 27), but many of its other provisions concerning economic, social and cultural rights apply only to citizens of the Czech Republic. However, the legislation stipulating economic, social and cultural rights also grant many rights to foreigners, either on the basis of their residence status or on that of an employment contract. These rights will be dealt with in a report on the fulfilment of commitments and obligations arising from the International Covenant on Economic, Social and Cultural Rights which the Czech Republic is preparing at the moment. The fifth chapter of the Charter, which guarantees the right to judicial and other legal protection, applies fully to foreigners.

43. As the Report concerns development from 1993 to 1999, it is based in the following points on the legal conditions prevailing before Act. No. 326/1999 of Coll., on the stay of foreigners on the territory of the Czech Republic and the change of several laws (i. e. before January 1, 2000), which now governs this issue, came into being. During the evaluated period the conditions for entry and stay of foreigners were laid down in Act No. 123/1992 of Coll., on stay of foreigners in the territory of CSFR, as amended by subsequent legislation (hereinafter "the Aliens Act"). While the number of foreigners with a long-term residence permit had been growing very rapidly between 1993 and 1996, the trend slowed down in 1998. On the other hand, the number of granted permanent residence permits was higher. As of the end of 1998, the total number of foreigners with a residence permit in the Czech Republic was 220,187. The largest group (52,684, i.e. 24% of the total number of foreigners with a residence permit) was represented by Ukrainian nationals. However, the actual number of Ukrainians, who work mainly in the construction industry, is undoubtedly much higher, as many of them stay in the territory of the Czech Republic as tourists or illegally.[9]

44. The procedure employed to process applications of foreigners for permanent residence permits in the Czech Republic takes place in accordance with relevant provisions of Act No. 71/1967 of Coll., on administrative proceedings, as amended by subsequent legislation. In the event the application has been rejected, the foreigner is entitled to resort to any ordinary or extraordinary remedies provided for in the act referred to above. The right of judicial control

over an administrative decision taken pursuant to the Aliens Act (Article 32, Paragraph 2) was a consequence of a judgement rendered by the Constitutional Court (No. 160/1998 of Coll.) that cancelled, as of May 13, 1999, two of the provisions of the above Act on the grounds of their unconstitutionality and which strengthened considerably legal certainty of foreigners. A second judgement (No. 159/1998 of Coll.) concerned the application of remedies against rulings banning residence in the territory of the Czech Republic (Article 14, Paragraph 1, Letter F, cancellation of the non-dilatory nature of appeals).

45. In principle, the Czech legal system grants the same status to foreigners with a permanent residence permit as to Czech citizens. The most important exceptions consist in the fact that foreigners do not have any right of vote and they are not subject to conscription (compulsory military service). According to Article 7 of the Aliens Act, a permanent residence permit could be granted especially for the purpose of re-unification families in cases where the foreign applicant 'sspouse, direct-line relative or sibling is permanently residing in the territory of the Czech Republic. It could also be granted in other cases, on humanitarian grounds or if such an act could be justified by foreign policy interests of the Czech Republic.

46. A special category among foreigners is represented by refugees and applicants for the status of a refugee. Article 43 of the Charter of Fundamental Rights and Freedoms states that the Czech Republic grants asylum to foreigners persecuted because of promoting political rights and freedoms. The asylum may be denied only to those applicants whose conduct was in conflict with fundamental rights and freedoms. Another legal instrument dealing with the status of refugees is the 1951 Convention on the Legal Status of Refugees, as well as the 1967 Protocol thereto (No. 208/1993 of Coll.). During the evaluated period, the Act No. 498/1990 of Coll., on refugees, in terms of its amendments, governed not only the proceedings determining the legal status of refugees, but also their factual status. As of January 1, 2000, a new Act No. 325/1999 of Coll., on asylum and on the change of Act No. 283/1991 of Coll., on the Police of the Czech Republic, comes into effect. This Report, however, concerns the legal norms which were valid in the evaluated period, i. e. between January 1, 1993 and December 31, 1999.

47. Refugees are guaranteed the same status as citizens of the Czech Republic, except that they do not have the right to vote, they are not subject to conscription (compulsory military service), and they are allowed to acquire immovable property or be involved in a gainful occupation only under special terms and conditions applying to foreigners. However, with respect to the possibility of employment, Act No. 1/1991 of Coll., on employment, as amended by subsequent legislation, they are in the same position as foreigners with a permanent residence permit, i.e. equal to citizens of the Czech Republic. They do not need any working permit to be employed.

48. Furthermore, refugees are deemed to have the same status as foreigners with a permanent residence permit for the purpose of health insurance and social security, as well as for the purpose of obtaining or losing the Czech citizenship pursuant to a special law. The amended State Citizenship Act (No. 194/1999 of Coll.), effective since September 2, 1999, simplifies the naturalisation of refugees. Unlike other foreigners, persons with the refugee status are not required to produce a document showing that they have lost or given up the existing citizenship, and they may also be exempted from the requirement according to which they should spent five years in the Czech Republic before they can submit an application for the Czech citizenship.

49. Refugees are entitled to attend, free of charge, Czech language courses, and they are also entitled to education provided in the framework of compulsory school attendance. Pursuant to Resolution of the Government No. 636/1996 and related decrees, state authorities implement the so-called National Programme of Assistance to persons who have been granted the refugee status. Basically, the programme provides financial assistance (funded by the state) to refugees seeking housing or a job. However, the assistance is provided only to persons who have already been granted the refugee status and their families, i.e. not to applicants for the refugee status. In addition to the programme referred to above, there is also a National Programme of the Integration of Foreigners of Proven Czech Descent.

50. The Refugees Act also determines the status and position of applicants for the refugee status. At the moment, applicants for the refugee status must stay in a designated refugee camp throughout the asylum proceedings. Exemptions may be permitted by the refugee camp management, and they are subject to an approval of the relevant administration authority. The applicants are entitled to accommodation, free food and pocket money, and they are also provided essential medical care free of charge. If an applicant is granted an exemption and is allowed to be accommodated in a private facility, the person accommodating him or her must also undertake to furnish material provisions to the applicant. According to Article 7 of the existing law, the applicant is also entitled to a free interpreter in connection with the asylum proceedings, and is also relieved of whatever costs and fees may arise in connection therewith.

51. The number of applicants for the refugee status has been gradually growing. The numbers of applicants and persons that have been granted the refugee status are shown in Table 1 below:

Year	Number of applicants	Number of people that have been granted the refugee status
1993	2,207	251
1994	1,187	116
1995	1,417	59
1996	2,211	162
1997	2,109	96
1998	4,086	78
1999 (October 31)	5,768	55

52. From the viewpoint of the protection of rights, the most problematic group of foreigners is that of illegal immigrants. Illegal immigration both to and especially through the Czech Republic[10] is increasing. According to the police authorities, there are organised groups involved in illegal smuggling of people across the border, with smugglers frequently abusing the difficult position of illegal immigrants. More than once, illegal border crossings have put in jeopardy lives and health of the people being smuggled across the border.

53. Even illegal immigrants have an inherent right to life and to be treated in a human and respectable manner. At the same time, state authorities do not have many chances to protect the rights of these people, unless they register themselves or are apprehended by state authorities.

Certain acts of state authorities, especially by the police, which affect personal freedom of illegal immigrants, also become targeted for criticism. Many of those who illegally enter the territory of the Czech Republic are detained and subsequently apply for the refugee status, thereby making their stay legal; in such cases, they enjoy rights of asylum applicants.

54. Between 1993 and 1999, a specific category of foreigners was represented by former citizens of CSFR who became Slovak citizens as of January 1, 1993, although they had been permanently resident or dwelling in the territory of the Czech Republic. Actually, Act No. 40/1993 of Coll., on the acquisition and loss of state citizenship of the Czech Republic, as amended by subsequent legislation, tackled the issue of the acquisition of citizenship with respect to one of the successor countries - the Czech Republic - without taking into account the will of individuals who were citizens of the former Czech and Slovak Federative Republic and were permanently resident in the territory of the Czech Republic.[11]

55. Many of these former citizens of CSFR were unable to opt for the state citizenship of the Czech Republic; the option could be exercised until June 30, 1994, under the terms and conditions laid down in Article 18 of Act No. 40/1993 of Coll. According to Article 7, Paragraph 1, Letter (c), of Act No. 40/1993 of Coll., the Czech citizenship could be granted to an applicant who had not been convicted of an intentional criminal act in the last five years. The same conditions (except for the required duration of the permanent residence in the territory of the Czech Republic, which was extended from two to five years after the option period had expired) applied to the granting of the citizenship upon request. The process of meeting all the requirements of the citizenship application was demanding in both financial and administrative terms, thus posing an obstacle which was difficult to surmount for less educated applicants, among whom there were many Romanies. The applicant had to attach to his or her application excerpts from the Criminal Registers of both the Czech and the Slovak Republics, Birth Register documents, an official document showing that he or she had been released from the citizenship of the Slovak Republic, and others.

56. Following the criticism of the act referred to above - both by international and non-government organisations monitoring the compliance with human rights in the Czech Republic - there was a step-by-step evolution of opinions of both the general public and of the professional community, which was initially reflected in partial changes and amendments of the act. While an amendment of 1996 retained the provisions of Article 7, Paragraph 1, Letter (c), of Act No. 40/1993 of Coll., there was also a new Paragraph 3 added to Article 11 of the aforementioned act, according to which the Ministry of the Interior was allowed to waive the above requirement if the applicant was a citizen of the Slovak Republic having an uninterrupted permanent residence in the territory of the Czech Republic since December 31, 1992, at the latest.

57. Nevertheless, many of the applicants were unable to acquire the citizenship, as they were encountering numerous additional problems of administrative nature during the administrative proceedings. In many cases, the administrative procedure was not completed because of lack of co-operation on the part of the applicants.[12] However, the problem was eliminated in full by another amendment to the Act on Acquisition and Loss of Citizenship, which came into force on September 2, 1999 (Act No. 194/1999 of Coll.). The amendment substantially facilitates the acquisition of the Czech citizenship by those former CSFR citizens who had been permanently

resident in the territory of the Czech Republic as of December 31, 1992, even though they might have subsequently been living in the Czech Republic without any permit. Such persons can now acquire the Czech citizenship by declaration, as provided for in Article 18a of the aforementioned act, without being released from the Slovak citizenship.

58. The amendment also confirms the citizenship of those Czech citizens who opted for the Slovak citizenship within the period of time allowed by the Slovak Act No. 40/1993 of Coll., on state citizenship. As a matter of fact, Article 18, Paragraph 1, of Act No. 40/1993 of Coll., contains a declarative confirmation of a previous ruling of the Constitutional Court to the effect that persons who had been Czech citizens as of January 1, 1993, and opted for the Slovak citizenship following the division of Czechoslovakia, have not lost their Czech citizenship as a result. In addition, an amendment to the Act referred to above stipulates that no former Czechoslovak citizen who will apply for the Slovak citizenship will not lose his or her Czech citizenship as a result. This provision can be made invoked especially by some 3,500 Czech citizens who have been living in Slovakia since the division of CSFR.

59. However, Czech citizens permanently residing in the Czech Republic who were released from their Slovak citizenship in order to acquire the Czech citizenship are now also interested in the possibility of dual citizenship. The Slovak Republic has now offered these people a renewal of the Slovak citizenship which, however, will not make them lose the Czech one. A minor modification - exemption from the requirement to be released from the other citizenship for those people who have been living in the Czech Republic for more than twenty years applies mainly to Polish and Bulgarian nationals.

3. Possibilities of Legal Protection

60. This provision of the Covenant is covered by the fifth chapter of the Charter, which deals with the right to judicial and other forms of legal protection. Article 36 of the Charter reads as follows:

> *(1)* *Everyone shall be able to seek his or her right using an appropriate procedure before an independent and impartial court or, where appropriate, before another authority.*
>
> *(2)* *Unless stipulated otherwise by the law, whoever claims to have been entrenched upon his or her rights by a ruling of a public administration authority shall be allowed to turn to the court and demand that it examine the lawfulness of the ruling in question. Examinations of rulings concerning the fundamental rights and freedoms as listed in the Charter shall not be excluded from the jurisdiction of the court.*

Paragraph 4 of the above article also stipulates that details and conditions of the procedure referred to above shall be laid down in a separate legal act.

61. In the Czech Republic, everybody is entitled to judicial protection, irrespective of whether he or she is a Czech citizen or not. Anybody can seek his or her right before the court which is independent on the executive power and impartial, using an appropriate procedure. The

law can also stipulate a different procedure insofar as the examination of the lawful nature of rulings of public administration authorities is concerned, but only the court is regarded competent with respect to examining such rulings that concern the rights and freedoms guaranteed by the Charter.

62. The last instance with respect to remedies against rulings of domestic authorities, in particular general courts, is the Constitutional Court. Among other things, it also examines constitutional complaints against final rulings and any other interventions of public authorities into fundamental rights and freedoms guaranteed by the Constitution. The law stipulates who and under what terms and conditions is entitled to bring an action and commence the proceedings before the Constitutional Court, as well as other rules pertaining thereto. Entitled to submit a constitutional complaint to the Constitutional Court are:

(a) natural persons or legal entities challenging final rulings of or other measures taken by a public authority, if they believe their fundamental rights or freedoms guaranteed by a constitutional law or an international treaty dealing with human rights and fundamental freedoms binding on the Czech Republic have been violated;

(b) a local government body challenging an unlawful intervention of the state;

(c) a political party challenging a ruling whereby it is about to be dissolved or any other unconstitutional or unlawful decision concerning its activities.

63. A constitutional complaint may be accompanied by an application to repeal a piece of legislation or a part thereof, if the facts which constitute the reasons for the constitutional complaint occurred due to the application of a specific law and if, in the applicant's opinion, such legislation is contrary to the rights and freedoms guaranteed by the Constitution or applicable international instruments including the present Covenant which has the status of an international treaty in accordance with Article 10 of the Constitution.

64. The Constitutional Court also takes decisions (pursuant to Article 87, Paragraph 1, Letter (i), of the Constitution) regarding measures that are necessary to enforce a ruling of an international court binding upon the Czech Republic, if there is no other way how to enforce it. With respect to proceedings such as those described above, the Constitutional Court Act stipulates that the term "international court" as used therein denotes an international body authorised to take decisions in matters related to complaints against violations of human rights and fundamental freedoms, whose rulings are binding upon the Czech Republic pursuant to ratified and promulgated international treaties on human rights and fundamental freedoms binding on the Czech Republic. Such a body is the European Court for Human Rights.

65. As to the proceedings taking place before the Constitutional Court, the law stipulates that they be in compliance with generally recognised democratic principles of judicial proceedings; hearings are public, the decision-making is independent and impartial, the parties are equal and entitled to use their respective mother languages. Judges of the Constitutional Court are bound solely by constitutional acts, international treaties according to Article 10 of the Constitution,

and the Act on the Constitutional Court and its Rules of Procedure. Enforceable rulings of the Constitutional Court are binding upon all institutions, authorities and persons concerned.

66. The current caseload of the Constitutional Court concerns in particular alleged violations of the Constitution, the Charter of Fundamental Rights and Freedoms whilst the Covenant has been invoked less frequently. Since the Constitutional Court has commenced its work, references to different provisions of the Covenant have appeared in approximately 30 of its judgements. However, the abolition of a piece of legislation or a part thereof exclusively on the grounds of its incompatibility with an international treaty has so far been exceptional in its history (Judgement of the Constitutional Court No. 41, dated April 9, 1997, regarding the legal institute of "institutional education", in respect whereof the Constitutional Court repealed a part of the provisions of Article 171 of the Criminal Code because of its incompatibility with Article 3, Paragraph 1, of the Convention on the Rights of the Child). The Constitutional Court has also pointed out a more extensive interpretation of the protection of human rights and fundamental freedoms guaranteed by the Covenant in comparison with the domestic law (Resolution No. 30, dated April 10, 1998, on the freedom of religion and belief as provided for in Article 16, Paragraph 1, of the Charter in comparison with Article 18, Paragraph 1, of the Covenant).

67. The number of applications submitted to the Constitutional Court grows every year; in 1994 there were 862, in 1998 already 2,221, i.e. the number has almost tripled. Since its establishment in July 1993 until April 30, 1999, the Constitutional Court received a total of 9,303 applications, of which 8,272 were discharged in one way or another (683 by a judgement, 5,605 rejected by a resolution, 1,476 postponed, 230 stayed); the remaining ones were joined, referred to another authority or treated in another way. The judgements of the Constitutional Court also included 93 Penal Code issues; in 63 of them, the Constitutional Court satisfied the petition and cancelled the previous ruling or repealed the relevant provision of the law, and rejected 30. Of all the matters, eight concerned abstract review of legislation, i.e. examination of the compliance of a particular legal provision with the Constitution; the rest were constitutional complaints against specific rulings or public acts, especially against court decisions (according to Article 72 of the Constitutional Court Act).

68. An important regional mechanism of the protection of human rights is the European Court for Human Rights. As of the date of the present report, there have been approximately 500 individual petitions lodged against the Czech Republic at the European Court for Human Rights. As of January 1, 1999, 99 of them remained outstanding. In one case, the European Court for Human Rights adopted a decision to the effect that there had not been any breach or violation of the Convention. For almost seven years for which the Czech Republic has been a party to the Convention referred to above, the European Court for Human Rights has not identified any instance of a breach or violation of the Convention on the part of the Czech Republic.

69. Act No. 519/1991 of Coll., which supplemented the Civil Procedures Code (Act No. 99/1963 of Coll.), introduced administrative judicial review, the execution of which has been entrusted to general courts pursuant to a new Part V of the Civil Procedures Code (Articles 244 through to 250s). This legislation provides both for judicial review of final administrative decisions by lodging an administrative action (Articles 247 through to 250k) and for judicial review of non-final administrative decisions by filing an appeal (Articles 250l through to 250s of the Civil Court Regulations). The court, however, examines only the legality

of the challenged administrative decision, i.e. does only a legal analysis of the case without establishing the facts on which the administrative decision has been based.

70. According to Article 36, Paragraph 2, of the Charter, subject to judicial review are decisions of public administration authorities, i.e. state administration and local government authorities, bodies of self-governing professional associations and legal entities that have been entrusted to decide on matters of rights and obligations of natural persons and legal entities in the field of public administration. However, the restriction set forth in the second sentence of the Article referred to above allows for exemptions from the general principle of judicial review of administrative decisions, which are listed in Article 248 of the Civil Procedures Code. Due to this fact that there may be doubts as to whether some of the administrative decisions indeed concern the fundamental rights and freedoms guaranteed by the Charter; the implementation of the Charter's provisions is likely to depend on judicial practice and perhaps also on the case law established by the Constitutional Court.

71. The judicial review can be exercised only with respect to final administrative acts, i.e. those where all remedies have been exhausted.(Article 247 of the Civil Procedures Code). The right to apply for judicial review of an administrative decision ceases to exist if the administrative decision has become final because the party concerned did not use the ordinary means of remedy as provided by law. The application for judicial review may be filed only by a natural person or a legal entity which was a party to the challenged administrative proceedings and claims that his rights have been violated by the given administrative decision; save for a few exceptions, the plaintiff must be represented by a lawyer.

72. In this respect, it is necessary to emphasise the essential importance of individuals knowing their rights guaranteed by the Covenant (and the Optional Protocol). Similarly, courts and administrative authorities must be aware of commitments accepted by the Czech Republic as a signatory of the Covenant. All constitutional laws, legal acts and generally applicable legal regulations in force in the territory of the Czech Republic, i.e. including ratified international treaties are promulgated in the Collection of Laws. Essential legislation is published with comments and references to relevant rulings.

73. There has not yet been any proper statistical evaluation showing to what extent individuals know their rights guaranteed by the Covenant or the Charter. Information provided by media has hitherto been insufficient, especially insofar as international treaties on human rights, including the present Covenant, are concerned. Efforts aimed at improving the level of general knowledge of rights protected by the Covenant, both on the part of the general public and on the part of courts and administrative authorities, must be a part of a broader campaign to enhance the legal awareness of every segment of the society which has been considerably weakened by decades of purposeful abuse of the law.

74. Article 91, Paragraph 1, of the Constitution has incorporated the Supreme Administrative Court into the system of general courts, but failed to stipulate its powers and status (as a special court) relative to the existing hierarchy of general courts, particularly with respect to the Supreme Court. The Supreme Administrative Court will have to be established by a legal act which, however, has not yet been adopted. This must be regarded as a legislative debt.

75. The current situation is significantly affected by the fact that the administrative justice in the Czech Republic started re-developing after a break of forty years, as the general supervision was entrusted to the Office of Public Prosecution between 1952 and 1993. The Office of Public Prosecution was authorised to intervene in civil law proceedings and exercise its supervision over criminal proceedings, but also exercised cassation powers in criminal and civil law matters. Owing to its powers, it was in a position to present claims on behalf of damaged parties to obtain remedy and, where applicable, a compensation. The Department of the State Prosecutor which has replaced the Office of Public Prosecution since 1994 does not have such authority. The mission of the Department of the State Prosecutor includes neither general supervision in the public interest over the legality of rulings or decisions issued in administrative proceedings, nor lodging extraordinary appeals called "complaint for violation of law" against final rulings rendered in civil law proceedings.[13]

76. Efforts aimed at restoring some of the former powers of the Office of Public Prosecution have been reflected in the Programme Declaration of the current Government (1998). The programme demands a transfer of powers to investigate criminal acts of policemen to the Department of the State Prosecutor and a restoration of the general supervision exercised by the Department of the State Prosecutor in the non-criminal field. The purpose of the proposed changes is to bring the Department of the State Prosecutor to a position in which it would be able to protect and defend public interests - particularly to protect citizens who are not parties to specific administrative proceedings, but whose interests might be affected by the given decision. Obviously, the general supervision of the Department of the State Prosecutor would not substitute the judicial review of legality of administrative decisions.

77. Furthermore, the Government submitted to the Chamber of Deputies a new Charter of law on the Department of the State Prosecutor, which should expand its jurisdiction and authorise it to file, in the public interest, court actions against decisions of administration authorities within three years from the effective date thereof. The new Charter represents a follow-up of amendments of the Civil Procedures Code.

78. The amended Civil Procedures Code, which have already undergone the first reading in the Chamber of Deputies of the Parliament as of the date of the present report, propose that the Department of the State Prosecutor be allowed to intervene in the following proceedings:

(a) whether an adoption of a child requires a consent of the child's parents;

(b) redemption of documents;

(c) concerning legal capacity (declaring a person incapable of legal acts or having just a limited legal capacity, restoration of legal capacity);

(d) concerning decisions to detain a person in a medical care institution;

(e) declaring a person dead;

(f) concerning the Companies Register;

(g) concerning certain issues pertaining to trading companies, co-operatives and other legal entities (Article 200 of the Civil Procedures Code).

79. Additional objectives of the amendment referred to above consist in using appropriate procedural tools to concentrate non-criminal proceedings at courts, expand procedural responsibilities of parties to lawsuits, and thus eliminate unnecessary delays in proceedings (Article 38, Paragraph 2, of the Charter) or ensure that the matter is settled within an adequate period of time (Article 14, Paragraph 3c, of the Covenant). As a matter of fact, it should be noted that one of the shortfalls the amendment aims to rectify is that, according to the Civil Procedures Code, courts are not authorised to examine the inactivity of administrative authorities or unnecessary delays encountered in the course of administrative proceedings. In practice, this fact hinders the enforceability of the right to have the matter settled and decided without unnecessary procrastination.

80. Furthermore, Article 36 of the Charter reads as follows:

(3) Anyone who has sustained a damage as a result of an unlawful ruling or decision of a court, another state authority or a public administration authority or an incorrect procedure having been used shall be entitled to a compensation thereof.

81. The responsibility of the state for any damage caused by a ruling or decision of or an incorrect procedure on the part of state authorities is currently dealt with in Act No. 82/1998 of Coll., on responsibility for damage caused in the course of exercising the public power by a ruling or an incorrect official procedure.[14] The act stipulates that the state is responsible for any damage caused, *inter alia*, by rulings and decisions issued in civil court proceedings, administrative proceedings, or criminal proceedings (Article 5).

82. Act No. 82/1998 of Coll. defines the ministries and other central administration authorities (hereinafter "central authorities") acting on behalf of the state in responsibility-related matters. These central authorities are obliged by law to act on the behalf of the state; this holds true not just in cases when a damaged party presents its compensation claim to such authorities according to Article 14 of Act No. 82/1998 of Coll., but with respect to any legal relations arising in matters of damage compensation.

83. The law distinguishes between the responsibility arising from decisions regarding detentions (described in the text to Article 9, Paragraph 5, of the Covenant), punishments or protective measures (described in the text to Article 14, Paragraph 6, of the Covenant), and the responsibility resulting from unlawful rulings and decisions, which may be any other rulings and decisions in individual matters and issued on the basis of relevant procedural regulations. The distinction has been chosen because a ruling confining a person, and thereby causing damage, need not necessarily be unlawful, and also because the other two types of rulings in criminal matters have their specific features as well.

84. As to the presentation of claims for a compensation of damage caused by an unlawful ruling or decision, the first and foremost condition is that the ruling in question must be final. As a rule, damage may be caused by final decisions, since only final decisions can be enforced. The law also provides for cases in which decisions are enforceable irrespective of their res judicata

validity. Another condition is a change or cancellation of a final ruling on the grounds of its unlawfulness; such rulings are cancelled by authorities empowered to do so pursuant to procedural regulations (generally in the proceedings concerning extraordinary remedies or proceedings before the Constitutional Court). The unlawfulness of a rulings is not determined in the course of damage compensation proceedings, but earlier. A compensation claim related to damage caused by a ruling which is enforceable irrespective of its legal validity may be lodged even in cases when the ruling in question has been cancelled or changed by an ordinary means of remedy, as such rulings can cause damage prior to the date when it became final.

85. The provision which makes it possible to claim a damage compensation only if the damaged party has made use of the possibility to contest the ruling or decision in question by remedies that are available to contest rulings which have not yet become final aims to reduce the resulting damage. The remedies referred to above include those the use of which is fully dependent on the will of the parties concerned; consequently, their non-use may be regarded as an omission of the parties.[15] Hence, such remedies do not include the initiation of a complaint on the grounds of a violation of law in criminal proceedings.

86. No damage compensation can be granted if the proceedings in question were discontinued because of the damaged party (as defined in the Criminal Procedures Code) having withdrawn his or her consent to institute criminal proceedings or having denied his or her consent to carry on with the same. The law requires such a consent only for selected criminal acts and if the damaged party is a close relative of the perpetrator (Article 163a of the Criminal Regulations); however, this arrangement too has its drawbacks, particularly insofar as domestic violence is concerned. Furthermore, no damage compensation can be granted if the criminal proceedings in question were conditionally stayed and effects of the discontinuation of proceedings supervened, i.e. when the criminal proceedings in question were discontinued as a result of a settlement ruling or because the punishment they might lead to is quite negligible compared to the punishment the defendant has already been or may reasonably be expected to be sentenced to,[16] or because there has already been a ruling in the matter taken by another authority, in disciplinary or similar proceedings, or by a foreign court or authority.

87. Persons entitled to a damage compensation are defined in different ways in Act No. 82/1998 of Coll., depending on what legal circumstances were behind the damage they have sustained. In the event of damage caused by a ruling of detention or punishment, the person entitled to claim the damage compensation is that person who has been detained or with respect to whom the punishment has been meted out. Insofar as damages caused by an unlawful ruling or decision in criminal proceedings are concerned, the persons entitled to claim the damage compensation are the parties to the proceedings resulting in the unlawful ruling or decision that has caused the damage.[17] The law expressly states that entitled to a damage compensation resulting from an unlawful ruling or decision is also a person that has not been treated as a party to the proceedings in question, although he or she should have been treated as such. In this respect, the term "party to proceedings" denotes a person or entity that is designated as such in relevant procedural regulations, not persons or entities that were recognised as parties in specific proceedings.

88. In addition to an unlawful ruling or decision, damage can also be caused by an incorrect official procedure. The term is not accurately defined in the existing legislation which contains

just one of its potential alternatives by way of an example. Attempting a definition of the incorrect official procedure is very difficult, as any such definition would imply a risk of the phenomenon not being described exhaustively. As a matter of fact, an incorrect procedure may consist in acts or omissions on the part of public authorities. It may consist in a violation of law, or in a breach of relevant by-laws, i.e. internal directives of various authorities.

89. It is obvious from the wording of the law that the term "incorrect official procedure" also covers a failure to take action or to issue a ruling within a period of time stipulated by law. If an authority which is obliged to adopt a decision according to law fails to comply with relevant legal decision-making deadlines or deadlines applying to the delivery of a written ruling, or if it violates general procedural regulations pursuant to which it is obliged to handle matters submitted to it promptly and without unnecessary delays, such behaviour will always be regarded as an incorrect official procedure.

90. The State may claim repayment of the damages paid to an individual against such authorities or their employees that have caused the damage in question by an unlawful ruling or decision, or as a result of having used an incorrect official procedure. When doing so, the State resorts to what is called "regress". It may be claimed back only if the damaged party has actually received a compensation. The law governing the regress procedure is designed hierarchically; basically, the payer of the compensation, i.e. the State, is entitled to demand the repayment (save for a few exceptions) from the authority or institution that has caused the damage, and the latter is in turn entitled to demand the same from its employees.

91. The State is responsible for damages inflicted in connection with the exercise of the power of the state. In accordance with Article 2, Paragraph 1, of the Constitution, the power of the state comprises legislative, executive and judicial powers. Act No. 82/1998 of Coll. is designed in a way allowing to claim a compensation or assign responsibility only for damages caused by the executive and judicial powers, and this subject to terms and conditions described in detail in the law. The State is responsible, subject to the terms and conditions described in detail in the law, for damage caused by circumstances expressly stated in the law, i.e. a ruling or an incorrect official procedure; at the same time, the law does not provide any reason exonerating the state from this responsibility.[18] However, the State does not bear any responsibility whatsoever under the law referred to above for any damage caused by generally binding legal acts and regulations. According to the law, no compensation can be claimed for any damage caused by the legislative power and so-called secondary legal acts.

92. Furthermore, Article 37, Paragraph 2, of the Charter reads as follows:

> *Everyone shall be entitled to legal aid in proceedings before courts and other state or public administration authorities from the very beginning of the proceedings.*

93. In a narrower sense of the word, the legal aid referred to above can be interpreted as qualified assistance provided by a lawyer. As to accused persons, the right referred to above is provided for in the Criminal Procedures Code. Insofar as persons accused of a criminal act are concerned, the legal protection of their rights recognised by the Covenant is described in detail in the text of the present report concerning Articles 9 and 14. Nevertheless, the provision of qualified legal assistance for other parties to criminal proceedings, e.g. damaged parties, may

pose a certain problem. They can be assisted, to pursue their rights, by a lawyer or a proxy, but are not entitled to free legal aid.

Article 3

94. Article 3 of the Charter states that essential rights and freedoms are guaranteed for all *irrespective of sex*.

95. In proceedings before courts - no matter whether civil or criminal - both sexes are equal. The principle of equality is not expressly stated in the Criminal Code, but *de facto* follows from provisions of Article 2 of the Criminal Procedures Code (Act No. 141/1961 of Coll., as amended by subsequent legislation).

96. Insofar as political rights are concerned, women were granted the same rights as men as early as in the first Czechoslovak Constitution (1920), but they still do not exercise their eligibility right in a sufficient manner. The representation of women in the House of Deputies is still low; in 1996, women accounted for 10% of the deputies, roughly the same figure as in 1930; it is 15% now. The relatively highest representation of women is in the Senate (20.5%). However, these figures are in sharp contrast with the representation of women in top-level executive power bodies; between 1990 and 1998, the total number of women in seven governments of CSFR and the Czech Republic was five, and there are no women at all among members of the present Government. It might be said that the current representation of women in top-level state administration institutions is not consistent with the objective progress in education and professional skills which women have achieved during the last seventy years.[19]

97. The situation is unsatisfactory not just at the top level, but also in lower-level state administration institutions and elected bodies of self-government[20] - for example, there were just 7 women among 73 District Office Heads as of the end of 1998. This number falls short of the required 30% representation of women in decision-making positions by the end of 1995, which was one of the principal objectives formulated and promoted by the UN Economic and Social Council. On the other hand, women's representation in the justice system of the Czech Republic is significantly higher than in most countries of the European Union, although the higher the position, the lower the percentage of women.

98. Women are more inclined toward membership in trade unions (there are roughly 25% of economically active women organised in trade unions, as compared to only 21% economically active men). Particularly important is their share in the build-up of the civic society, as women account for 70% of the membership of non-governmental organisations and institutions.

99. The official domestic document governing the state's policy with respect to ensuring the equal status of men and women is the Priorities and Procedures of the Government with Respect to Promoting the Equal Status of Men and Women, the fulfilment of which is annually analysed by the Government. Based on the analysis, the Government adds new measures or modifies existing ones. The document referred to above is thus open and flexible, and its contents can be adapted to current needs and requirements. Participating in the preparation, analysis and updating of the document are not just ministries and lower-level state administration authorities

directly responsible for the equal status of men and women, both *de jure* and *de facto*, but also the general public, especially non-governmental organisations of women and social partners. However, the document deals mainly with social rights.

100. Legal guarantees of the equal status of men and women and the actual situation are described in detail in the Initial Report (1994) and the 2nd Periodical Report (1999) on the fulfilment of the Convention on the Elimination of All Forms of Discrimination of Women.

Article 4

101. Article 4 of the Charter reads as follows:

(1) *Duties may be committed only on the basis of and within limits set forth by law, and subject to compliance with fundamental rights and freedoms.*

(2) *Limits of fundamental rights and freedoms may be set forth only by law, subject to terms and conditions stipulated by the Charter.*

(3) *Legal limitations of fundamental rights and freedoms shall be applied equally to all cases which meet set terms and conditions.*

102. However, Paragraph 4 of the same Article stipulates that "*when applying the provisions on the limits of fundamental rights and freedoms, their purpose and meaning must be properly examined. Such limitations shall not be abused for purposes other than those for which they have been instituted.*"

103. Furthermore, Article 9, Paragraph 2, Letter c) and d), of the Charter (on forced labour - see the text concerning Article 8 of the Covenant) permits, on the basis of the law, work required in the event of natural disasters, accidents or other dangers threatening human lives, health or assets of a substantial value, as well as actions demanded by the law in order to protect the life, health or rights of others.

104. Furthermore, Article 11, Paragraph 4, of the Charter permits a requisition or a forced curtailment of ownership rights in public interest, on the basis of the law and for a compensation. Article 12, Paragraph 3, of the Charter stipulates that interventions into the inviolability of home (others than house searches for purposes of criminal proceedings) may be permitted by law only if it is necessary in a democratic society for the protection of rights and liberties of others or to avert or eliminate a serious threat to public safety and order.

105. Likewise, Article 14, Paragraph 3, of the Charter permits restrictions to be imposed by the law on the freedom of movement and residence, if such a measure is unavoidable with respect to national security, maintenance of public order etc. (see the text concerning Article 12 of the Covenant). Similar restrictions of fundamental rights and freedoms are laid down in Article 16, Paragraph 4, of the Charter, which deals with religious freedoms (see the text concerning Article 18 of the Covenant).

106. Restrictions of fundamental rights and freedoms in emergency situations as provided for in Article 4 of the Covenant were dealt with in Act No. 40/1961 of Coll., on the defence of CSSR, as amended by subsequent legislation, which has been a part of the law throughout the period under observation. The Act allowed for restrictions of especially those ownership rights which are not protected by the Covenant during a higher defence readiness state. Article 6 of the Act allowed the Government to declare, in a higher defence readiness state situation, measures on the basis of which citizens could be ordered to take part in forced labour, e.g. by having to stay at work, being assigned to a specific job, or having to perform a specific job of a limited duration. Citizens were entitled to a remuneration for such forced labour in accordance with Article 26 of the act. At the same time, the Act provided for restrictions of the freedom of movement and residence in a designated area (Articles 14 and 22). The Czech Republic has never declared the restrictions and curtailments listed above.

107. The Constitutional Act on the security of the Czech Republic (No. 110/1998 of Coll.) provides for restrictions of fundamental rights and freedoms in three scenarios, namely:

(a) the state of emergency

(b) the state of national danger

(c) the state of war.

108. The state of emergency is declared for a period of 30 days in the event of a natural disaster, environmental or industrial disaster or accident, or another danger. The appropriate decision to declare the state of emergency is adopted by the Government which, however, immediately notifies the Chamber of Deputies; the latter can cancel the declared state of emergency.

109. The state of national danger occurs when the sovereignty, territorial integrity or democratic principles of the state are threatened. The appropriate decision to declare the state of national danger is taken by the House of Deputies and the Senate. If the term of office of deputies, senators, the President of the Republic, or members of municipal councils were to expire during the state of national danger or the state of war, it could be extended by six months.

110. The Constitutional Act referred to above provoked criticism by a part of the general public as an over-extensive and inaccurately defined intervention into fundamental rights and freedoms in the situations outlined above. The fact that the Constitutional Act has not been elaborated in a number of legal acts that would accurately specify the degree and manner of the curtailment of certain rights and impose specific duties upon natural persons and legal entities has also been subject to criticism. The new Act No. 222/1999 of Coll., on ensuring the defence of the Czech Republic, which came into force on December 1, 1999, has somewhat rectified the situation.

Article 5

111. The rules presented in Article 5, which are to be used to interpret provisions of the Covenant, are fully complied with in the Czech Republic. No human rights guaranteed by the

Czech law have been restricted on the grounds that the Covenant does not expressly protect them, or protects them to a lesser extent than the relevant Czech legal act. This applies particularly to the rights guaranteed by the Charter, some of which (especially those related to ownership) indeed enjoy a higher degree of protection than that offered by the Covenant.

Article 6

112. Article 6 of the Charter reads as follows:

> *(1) Everyone has the right to life. Human life is worthy of protection even before the birth.*
>
> *(2) No one shall be deprived of life.*
>
> *(3) The capital punishment shall not be allowed.*

113. In the Czech Republic, the capital punishment was abolished by the 1990 amendment of the Criminal Code, and cannot be re-introduced unless there is a change of Article 6, Paragraph 3, of the Charter. Moreover, the Czech Republic is bound by Protocol No. 6 to the Convention on the Protection of Human Rights and Fundamental Freedoms the first article of which reads as follows:

> *The capital punishment shall be abolished; no one shall be sentenced to such punishment or executed.*

The former CSFR accepted this part of the Convention without any reservation. The Protocol is not subject to termination notice and thus its validity for the Czech Republic could cease only if the European Convention were terminated as a whole.

114. Although public polls show that more than a half of the Czech population would agree with the capital punishment, its re-introduction is presently not considered politically viable. At the moment, there is not any political party in the Parliament that would demand the re-introduction of the capital punishment.[21]

115. The second sentence of Article 6, Paragraph 1, of the Charter ("worthy of protection even before the birth") expresses a moral rather than a legal category. It does not tackle the problem whether to ban or permit abortions, i.e. the problem whether this issue involves legitimate decision-making powers of the physician, state, mother, father, both potential parents, or no-one. The terms and conditions under which an abortion is possible are laid down in Act No. 66/1986 of Coll., on abortions, and in Decree No. 75/1986 of Coll., which implements it.

Article 7

116. Article 7, Paragraph 2, of the Charter reads as follows:

> *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*

117. This stipulation is of principal importance for the law and order and the State institutions, first and foremost, for the police and their sections. However, it applies to the private sector as well (e.g. child abuse or extortion of debts by physical or psychological torture, etc.). The interpretation of the torture definition is extensive, including both physical and psychological torture.[22]

118. The Czech Republic is a signatory to the Convention against torture and other cruel, inhuman or degrading treatment or punishment and the European Convention on the prevention of torture and inhuman or degrading treatment or punishment. Both Conventions have been reflected in the Czech legislation, first and foremost, in the 1993 amendment of the Penal Code that includes in chapter 10 - crimes against humanity - a new Article 259a defining torture and other inhuman and cruel treatment. This provision is focused on the State, its institutions and elected representatives because it provides for an imprisonment of a person who

> *in executing his/her powers in state institutions, elected bodies or courts subjects another person to physical or psychological suffering by torture or other inhuman and cruel treatment, ...*

119. Stricter punishment shall be applied to those who act in an official position. Theoretically, there is a problem of persons covered by immunity. If such a person (e.g. a minister who is also a member of Parliament) issues an order to torture or to apply other bad treatment (e.g. during a war) he shall not be punished. However, the subordinate who was to carry the order will be punished either disregarding the order, or for torture or other bad treatment if he carries it out. Such a case, however, has not been registered in the period under review. Neither has anyone been prosecuted, convicted or sentenced for such a crime during the existence of the provision.

120. Additionally, the Penal Code includes Article 215 dealing with the abuse of a person put under charge which provides protections for both minors and all persons depending on the care of others (because of illness, age, handicap). It is not significant on what basis the care or upbringing is being provided - be it under the law, a court order, a contract, etc. Therefore, it also applies to abuse by parents or legal representatives, but also by teachers, nurses in health institutions, and other persons whose relationship with the abused is incidental. The abuse does not have to cause physical harm to the abused but the abused must view the behaviour as cruel, ruthless, and painful, taken as a flagrant injustice. The abuse of a person put under charge (under Article 215) can also occur in form of a failure to provide a compulsory care that the offender has been obliged to provide to a person who has not been able to take care of himself.

121. Under Article 89 of the Rules of Criminal Procedure no evidence obtained by unlawful coercion or a threat of coercion may be used in criminal procedure with the exception of cases when such an evidence is used against a person who has used such a coercion or threat of coercion.

122. Members of the Police Force of the Czech Republic (hereinafter the "Police") are obliged to act in performing their duties in compliance with the Constitution, the Charter and other laws of the Czech Republic, namely Act No. 283/1991 of Coll., on the police of the Czech Republic

(hereinafter the "Police Act") as later amended. In compliance with the Rules of Criminal Procedure and Police Act members of the Police and their investigators perform the following: they arrest persons, bring to the police premises persons suspected of a crime or other persons, detain persons suspected of a crime, interrogate witnesses and suspected persons before and after handing down a charge, interrogate other persons, and organise imprisonment in custody before expulsion from the country and the actual execution of the expulsion. Article 6 of the Police Act defines the following duties of the police:

(1) *In police actions and performance of police duties the policeman shall be obliged to respect the honour, prestige and dignity of persons including his own and prevent any unsubstantiated harm to the persons; any interference with their rights and freedoms may not exceed the limit necessary for achieving the objective of the police action or performance of the police duty.*

(2) *In police actions and performance of police duties affecting the rights and freedoms of the persons the policeman is obliged to inform them about their rights provided the nature and conditions of the police action and performance of the police duty allow for that. If not they will inform the persons subsequently.*

123. Under Article 38 of the Police Act the policemen may use coercive means, such as physical restraint, tear gas, truncheon, handcuffs, police dogs, pushing out by horses, technical means to prevent a car from leaving, stopping belts and other means to force a car to stop, water gun, maroon, hit by a gun, threat by a gun, and a warning shot. The coercion means may be used by the policeman in order to protect the safety of persons, his own safety and property and public order against a person who poses a threat to them.

124. Before using the coercion means the policeman is obliged to warn the person who is a target of the action that he should stop his unlawful activities and inform him that coercion means shall be used (with the exception of technical means preventing a car from leaving). The warning may be skipped in case the life or health of the policeman or the life or health of other persons is endangered and the police interference cannot be delayed. The type of coercion means to be used is chosen by the policeman according to the actual situation with the aim to successfully complete the action: he shall use a coercion means needed for subduing a person involved in unlawful activities. The policeman is obliged to prevent any harm disproportionate to the nature and peril of his unlawful action when using coercion means. Any police action in which coercion means has been used must be reported immediately to the policeman's superior whose duty is to check whether the coercion means have been used in compliance with the law.

125. Citizens have a right to file a complaint against an unjustified limitation of personal freedom or against a bad treatment by the police during any police actions. All such complaints are treated by the respective police complaint and inspection departments. If a policeman is suspected of a crime the case is investigated by the Inspection of the Minister of Interior directly subordinate to the Minister. The Inspection of the Minister of Interior investigates police crime and under the Rules of Criminal Procedure it enjoys a position of a police authority.

126. External (civil) inspection mechanisms of police activities or locations of personal liberties limitation are not in place and the existing inspection mechanism is being criticised by

some citizens and professionals for its lack of openness. The rate of success in dealing with complaints by citizens against undue behaviour, abuse of official position and, namely, use of physical violence remains rather low though the number of complaints accepted as justified slowly grows. Higher justification is seen in refusing an information under the Rules of Criminal Procedure or rulings in administrative cases. Another problem in the period under review has been the insufficient transparency of the police activities. Though the complaint has been considered justified the claimant does not learn about the measures that have been adopted. The interpretation of all such statistics is, however, difficult: should the system of inspection be rather objective in the long-term the increase in the number and percentage of justified complaints is to be seen as a deterioration in the police compliance with human rights. On the other hand, the increasing number and percentage of justified complaints may be seen as a positive signal documenting the growing objectivity of the inspection system.

127. The police actions that have been highly publicised and some parts of the public and media have seen them as inadequate include, namely, actions against bigger groups of persons: a police raid in Propast club[23] (4th May 1996), an action against Global Street Party participants[24] (16th May 1998) and an action against protesters against the rally of neo-fascists (1st May 1999).[25]

128. At present a new police act is being drafted, it should, among others, improve the existing inspection mechanism and promote the guarantees for citizens against any potential unjustified encroachment of their personal freedoms. As the Government resolution on the report by the European Committee for Prevention of Torture and Inhuman or Degrading Treatment (hereinafter "CPT") about their visit to the Czech Republic on 16th to 26th February 1997 indicates the changes will reflect the CPT recommendations on the rights of detained persons to immediately inform their relatives, a lawyer and a doctor of their choice, to get a written information about their rights and a protocol on each limitation of their freedom.

129. Training of policemen and their education to respect human rights are provided by police colleges run by the Ministry of Interior and the Police Academy of the Ministry of Interior. Human rights education is mostly a part of lectures on legislation and police deontology. Life-long education of policemen continues to be a problem.

130. Apart from the Police of the Czech Republic a Community (Municipal) Police exist under the Act No. 553/1991 of Coll., on community police. The Act has been repeatedly amended but the amendments have not changed the legal status of this police force. The Community (Municipal) Police force is established by the local government. Since the community policemen are authorised to require explanation, detain an offender caught when committing an offence, bring a person to the Police of the Czech Republic, confiscate a weapon, ban entrance to pre-defined areas, open a flat or other spaces and confiscate a thing, the law allows them to use coercion means though to a lesser extent than the policemen of the Czech Republic. The coercion means allowed include physical restraint, tear gas, truncheon, handcuffs, hit by a service gun, threat by a gun and a warning shot. In case of a suspicion the community policemen committed an offence he is prosecuted in the same way as any other citizen. There is no special body that would investigate offences committed by community policemen.

131. The rights and responsibilities of the Military Police are defined in Act No. 124/1992 of Coll., on military police. Article 1 of the Act defines the role of the Military Police as a service policing the Army of the Czech Republic and the State property administered or used by the Ministry of Defence. Article 2 of the aforementioned Act defines the scope of activities applied in relation to soldiers in active duty and to "persons present in military facilities and areas of military actions and to persons committing an offence or petty offence together with soldiers or against the property of the Army of the Czech Republic or State property administered or used by the Ministry of Defence". Article 13 authorises the military policeman to detain a soldier in pre-defined cases for maximum 24 hours since the moment of limiting his personal freedom. Article 15 authorises the military policeman to restrain free movement of the soldier, e.g. by handcuffing him to a fixed object for maximum 2 hours. The military policeman may also use coercion means. The general method of using coercion means and their list are defined in Article 22 of the above mentioned Act.

132. The use of coercive means, including firearms, was authorised in the period under review by Act No. 76/1959 of Coll., on some service assignments of soldiers, as later amended, also for soldiers performing policing, patrolling, escorting and warrant service. Article 34 specified conditions under which a soldier could use coercion means and a gun and when their use was limited or excluded. The powers vested under these provisions were used for protecting the property, persons and interests defended by the armed forces of the Czech Republic. They were used only as an exception, mostly in patrolling service, and the justification of their use was always carefully inspected. As of 1st December 1999 the issue is treated in Article 42 of Act. No. 219/1999 of Coll., on the armed forces of the Czech Republic.

133. In almost all types of armed forces and services cases of "bullying" occur, mostly in leisure time, not during the drills. Enlisted men are mostly bullied by other earlier enlisted men; the form varies from psychological or physical pressure to demands for specific personal services. In the period under review bullying resulted in both light and serious injuries.

134. Bullying as a military offence of violating rights and protected interests of soldiers is treated in Article 279a and 279b of the Penal Code, as later amended. Military police plays an important role in discovering this offence and it acts as a police body in the criminal Procedure. Annually, over 200 cases of bullying of various types and intensity are discovered but it is obvious that it is just a tip of the iceberg. Less serious bullying cases are treated in a disciplinary procedure which means that the perpetrators do not get before the court. It can be assumed that the overwhelming majority of cases is never discovered.

135. The cases of bullying in the armed forces are in the focus of attention of the Military Police and the armed forces commanders but also of the Inspection of the Minister of Defence that includes an inspector in charge of the protection of human rights within the defence section. He performs planned and unplanned inspections of human rights protection in military units and reviews petitions (requests, proposals and complaints in public or other interests) and private complaints. To help eliminate bullying in the armed forces a help line was installed by the Inspection that can be called by the soldier but also his parents or relatives with a request for a legal or psychological aid. Enlisted men (in armed forces or alternative service) are informed about human rights and legal aspects of military offences with a focus on bullying during their military and alternative service.

136. Bullying in the education sector is treated by an independent inspection body - Czech School Inspection - that registers complaints against corporal and other undue punishments of pupils, their bullying or degrading. Only 1 - 2 cases annually are found justified by the Ministry of Education, Youth and Sport. Somewhat more frequent are cases of bullying between pupils, namely in boarding schools.

137. Bullying in prisons is a continuous problem. The violence is mostly aimed against physically weak prisoners or prisoners sentenced for crimes against children or women. Many complaints are filed against the violence inflicted by other prisoners who take away property from the others, force them to provide various services and physically attack them, but also against insufficient protection by prison guards, although according to the Ministry of Justice the Prison Service pays much attention to the occurrence and prevention of violence in prisons. The President's Office has information on the excessive use of coercive means in prisons that is sometimes unjustified.

138. Complaints against maltreatment by prison guards are mostly found unjustified. It should, however, be said that in the present practice any complaints by prisoners sent to the Prison Service headquarters are sent back to the internal inspection department of the prison that has been complained against. Such a procedure, obviously, is not ideal because it can discourage the prisoners from insisting on handling their complaint.

139. In the period under review, a system of a life-long education of members and civil employees of the Prison Service have been built. Education with the aim to prevent torture or other bad treatment is emphasised. However, the level of training of the prison guards is still insufficient.

140. Specific problems of prisons are treated in Article 10 of the Covenant. More detailed description of the situation related to Article 7 of the Covenant are part of the initial (1993) and 2nd periodical (1994-7) reports on measures adopted in order to fulfil the obligations under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment that the Czech Republic has submitted to the Committee against Torture (CPT).

Article 8

1. and 2. No slavery and no servitude

141. The Czech Republic is a signatory to the Convention on slavery (No. 165/1930 of Coll.). The ban on all forms of slavery, slave trafficking and servitude defined in Article 8 of the Covenant is strictly observed in the Czech Republic.

3. Ban on forced or compulsory labour

142. Forced labour is banned in the Czech Republic by Article 9 of the Charter which states in its first Paragraph:

No one shall be subjected to slave labour or services.

143. Four exceptions from the general ban exist and they are listed in Paragraph 2:

(a) work assigned under the law to imprisoned persons or persons in other punishment replacing an imprisonment;

(b) military or other service that under the law replaces the compulsory military service;

(c) any service required by the law in cases of emergency, disasters, or other threats to life, health or property;

(d) behaviour under the law with the aim to protect life, health and rights of other persons.

144. The original provisions of the Labour Code, No. 65/1965 of Coll., that could be seen as a legislation on forced labour (e.g. moving to another job without consent) were repealed by the Labour Code amendments (namely No. 74/1994 of Coll.) or are amended in a new draft under which the employer can send an employee on a business trip only with the employee's consent.

145. The Czech Republic is a signatory to the 1930 International Labour Organisation convention No. 29 on forced labour (CSFR since 1957, Czech Republic since 1993 - published in the Official Journal as No. 506/1990) and the 1957 convention No. 105 on eliminating forced labour (the Czech Republic since 1996 - No. 231/1998). The Government sends official compliance reports to the International Labour Office. The latest report on convention No. 29 was sent in 1998 and on convention No. 105 in 1999. The definition of an activity which is not seen as a forced or compulsory labour under Article 8, Paragraph 3, Letter c) is almost identical with the definition in the Convention No. 29.

146. Any illegal enforcement of forced labour may be classified as an offence of oppression under Article 237 of the Penal Code.

147. The compulsory army service was regulated in the period under review by the Act No. 92/1949 of Coll., on the armed forces, as later amended and in the Act No. 18/1992 of Coll., on civilian service, as later amended. Currently the Act No. 92/1949 of Coll. was replaced by the Act. No. 218/1999 of Coll., on the scope of military duty and on military administration. Service duties defined in Article 20, Paragraph 1 of Act No. 92/1949 of Coll. as well as in Article 1 of the act on civilian service are not seen as forced labour or service.

148. In Article 1 of the act on the civilian service the civilian service is defined as a service that the citizen who has a service obligation must perform if his conscience or religious belief prevents him from being enlisted for basic (alternative) service in the army or military exercises. The citizen performs a civilian service in the form of auxiliary work in State organisations, communities and non-profit non-governmental entities, namely health institutions, social services, conservation of environment, liquidation of natural disasters, and other generally beneficial works. The civilian service is by one half longer than basic (alternative) service in the army and for reservists by one half longer than missed military exercises. The Government may shorten the length of the civilian service by its decision.

149. The cases defined in Article 8 of the Covenant as emergency or calamity threatening the life or well-being of the community are reflected in Article 9, Paragraph 2, Letter c) of the Charter that covers cases of force majeur presenting a major threat to life, health or property due to natural disasters. Such cases are foreseen e.g. in Article 18 of Act No. 133/1985 of Coll., on fire protection, as later amended. Similar measures are adopted for the enforcement of the Act on the defence of the CSFR as defined in Article 1, Paragraph 2 of the CSFR Government decision No. 284/1992 on economic mobilisation if related to individuals. There is a general authorisation to order service in cases of natural disasters and other emergencies defined in Article 5, Paragraph 2 of the Act No. 425/1990 of Coll., on district authorities, as later amended.

150. At present there is no problem in the Czech Republic with a forced or compulsory labour of prisoners as defined in Article 8 of the Covenant. The prisoners are paid for their work. The prisoners are obliged to work; however, in the present economic situation the major problem is to find jobs because the demand for work by the sentenced prisoners is much higher than the number of available jobs. In 1999 a new act, No. 169/1999 of Coll., effective on 1st January 2000 on the execution of the prison sentence in which the Article 29 and the following define conditions for employing prisoners.

151. The amendment of the Penal Code No. 152/1995 of Coll., effective on 1st January 1996, broadened the range of punishments to include a new alternative to imprisonment, the performance of community work (Article 45 and 45a), a court-ordered work that the offender must do personally, free of charge and in his leisure time. The court may hand down a community work sentence for an offence for which a prison sentence could be five years at the most. The sentenced person must perform a set scope of community work in maintaining public spaces, cleaning and maintenance of public buildings and roads, or other works beneficial for the community. The use of community work sentences is documented in the following table.

Year	Number of community work sentences
1996	725
1997	1 598
1998	1 776

152. Men enlisted for national (alternative) army service or called to a military exercise could be, in the period under review, ordered to work when serving a disciplinary punishment of imprisonment (defined in Article 10 of the Covenant). In compliance with Article 17a, Paragraph 2 of the Act No. 76/1959 of Coll., on some service contracts of soldiers, as later amended, it was possible to order a soldier under disciplinary punishment to work 8 hours daily at maximum. As of 1st December 1999 the issue is regulated by Article 39, Paragraph 2 of the Act No. 220/1999 of Coll., on the performance of national or alternative military service and military exercises and on legal status of reservists.

Article 9

1. The right to liberty and security of person

153. Article 8 of the Charter states:

(1) Personal liberty is guaranteed.

(2) *No one shall be prosecuted or deprived of liberty except on such grounds and in accordance with Procedure established by law. ...*

154. The police is the first and foremost body authorised in cases strictly defined in law to limit the right to personal freedom. The Act No. 283/1991 of Coll., on the Police of the Czech Republic, as later amended, defines who can be placed in a police cell, under what conditions and what requirements a police cell should meet. A state attorney office[26] supervises the compliance with regulations in places where a lawful restriction of personal freedom is performed - imprisonment, detention, protective treatment, protective or institutional education, etc.

155. The guarantees against bad treatment by the police including unjustified deprivation of personal liberty is described in detail in Article 7 of the Covenant. The legislation and practice applied in arrests and detentions are defined in Article 9, Paragraphs 2 and 3 of the Covenant.

156. In the area of health care the relevant issues are treated in Article 23, Paragraph 4 of Act No. 20/1966 of Coll., on the care for the health of the population, as later amended. Under this provision no consent of a sick person is required for medical examination and treatment as well as for admitting the person to a health-care institution, where the character of the illness requires it, under the condition that:

(a) the illness is listed in a separate regulation allowing for a compulsory treatment,

(b) the person obviously suffers of a mental illness or intoxication and presents a threat to himself or his surroundings, or

(c) *it is not possible, in view of the sick person's condition, to ask for his consent and immediate treatment is necessary for saving the person's life or health.*

Most cases of involuntary admission concern admission to a psychiatric ward. Only exceptionally (in case of some infectious or sexually transmitted diseases) may a person be placed in non-psychiatric institutions.

157. Placing a person in a health institution for reasons listed in Article 23, Paragraph 4 of the aforementioned act (in compliance with Article 8, Paragraph 6 of the Charter) without his written consent must be reported by the respective health institution to a relevant court within 24 hours. In the first stage, the court decides on the admissibility of the institutional care without the consent of the patient and it must pass a decision within seven days. The placement is not reported to the relevant court if the person has consented to institutional care within the next 24 hours. It may be viewed as a shortcoming, however, that if a person disagrees with his admission to a health institution the court decides on the basis of an expert opinion of a single institution - the one that has admitted the person without his consent.

158. The admissibility of any further placement of the person in the institution must be decided by a court within three month and the court is obliged to call for an opinion of an

institution independent of the one that has admitted the person without his consent. As the Ministry of Health indicates, the present legislation puts the two parties - the health institution and the person admitted without his consent - in unequal positions and it would help to strengthen the patients position by the help of a lawyer, representative of the ombudsman, ethical commission or a representative of an organisation of patients.[27]

159. As of the date of submitting this report the guarantees against placing in a health institution without consent are higher than they were until 1997 when an administrative body could decide about the person's placement in an institution without his consent under Article 9, Paragraph 4 of Act No. 37/1989 of Coll., on the protection against alcoholism and other drug addictions. The Constitutional Court in its ruling No. 229/1997 of Coll. repealed this provision stating its conflict with Article 8, Paragraph 6 of the Charter. The ruling says:

> *The law stipulates in what cases a person may be admitted or kept in a health institution without his or her consent. Such a measure must be reported to a court within 24 hours and the court should pass a decision on such a placement within 7 days.*

The Constitutional Court ruled that only a court is authorised to rule about the placement of a person without his consent based on the reporting obligation of the health institution. An administrative body cannot take any decision in this respect.

160. A specific case is represented by the admission into a health institution of persons accused of a crime. Under Article 116, Paragraph 2 of the Rules of Criminal Procedure the court - in the pre-trial period a judge following a submission by a state attorney - may order an observation of the accused in a health institution or, if he is in custody, in a special section of the detention centre if his mental condition cannot be identified otherwise. Such a procedure has been, however, exceptional in practice. If it is applied there is always a prior careful consideration about the need and adequacy of such a serious limitation of human rights and fundamental freedoms.

2. and 3. Detainment, arrest, custody

161. The Rules of Criminal Procedure distinguish between the detainment of an accused or suspect in an offence and an arrest. Detainment is defined in Article 75 and 76, Paragraph 1 of the Rules of Criminal Procedure as a short-term deprivation of liberty of the accused or a suspect in an offence for a review of potential grounds for custody (Article 67 of the Rules). The Charter states in its Article 8, Paragraph 3:

> *An accused or a suspect of a crime may be detained only in cases defined in the law. ...*

162. The detainment of the accused is possible only after meeting the following conditions:

- the person to be detained has been informed about the charge (Article 160, Paragraph 1, Article 32 of the Rules of Criminal Procedure);

- any of the custody reasons under Article 67, Paragraph 1 of the Rules of Criminal Procedure can be applied on taking the accused into custody, i.e. specific facts justifying the fears that

  (a) the prisoner will escape and hide to avoid prosecution and punishment, namely, when it is not possible to immediately establish his identity, he has no permanent residence, or there is a long punishment pending - i.e. custody to prevent escape,

  (b) the prisoner will influence witnesses unheard by the court or accomplices or otherwise thwart investigation of facts significant for the prosecution - i.e. custody to prevent collusion,

  (c) the prisoner will continue in the criminal activities he is prosecuted for and complete an offence he has attempted or commit a crime he was preparing or threatening to carry out - i.e. custody to prevent new crimes.

- and the custody decision in an emergency case cannot be acquired in advance.

163. Being taken into custody represents a serious limitation of civil rights and freedoms which is recognized not only by the Covenant but also by Article 8, Paragraph 5 of the Charter which states:

> *No one shall be taken into custody without grounds and for longer than the time set in the law and ruled by the court.*

The placement in custody can only be decided by court,[28] or a judge in a pre-trial following a submission by a state attorney (Article 68 of the Rules of Criminal Procedure). The Czech legal order does not include the institute of an investigating judge and the state attorney is not viewed as "other officer authorised by law to exercise judicial power" defined in Article 9, Paragraph 3 of the Covenant.

164. The charge is communicated by an investigator if he concludes that an offence has been committed and there is a justified suspicion that it has been committed by a particular person. The accused can challenge the action by the investigator only by turning to the state attorney with a request to remove defects in the investigator's work (Article 167 of the Rules of Criminal Procedure).

165. The detention of a person *suspected of committing an offence* can be considered if

- the person to be detained is a suspect in a committed offence,

- there is any reason for placing in custody under Article 67, Paragraph 1 of the Rules (see above),

- it is urgent (without a detention the aim of the criminal procedure may be thwarted or its achievement made more difficult).

166. No prior authorisation is necessary for the arrest of an accused but the investigator is obliged to immediately inform the state attorney about the arrest. The authorisation of an arrest of a person suspected of an offence is issued by the state attorney on the basis of a written request of the investigator, the state attorney having examined the case. A written request may be omitted only as an exception, e.g. outside office hours, or in an emergency; in such cases the state attorney acquires the necessary information for the agreement by telephone. The authorisation can also be issued through technical means (e.g. fax or teletype).

167. When granting authorisation of the arrest the state attorney considers the nature of the case, sets a date for the investigator who carries out the arrest for submitting the minutes of the interrogation of the arrested person, minutes on the communication of the charge, and other evidence. He or she sets the date in such a way that he or she could examine the case within the period set by the law and, if required, submit a request for placing the accused in custody (Article 77, Paragraph 2 of the Rules). Without an agreement of a state attorney the suspect may be arrested if:

(a) the case is urgent, and, simultaneously,

(b) the agreement cannot be obtained in advance (e.g. not even by telephone), in particular when the person has been caught when committing an offence and/or he or she has been caught when escaping.

168. A person is considered as caught when committing an offence not only when caught during the actual offence but also when the suspect has been pursued immediately after the offence and subsequently caught, or when he of she has been caught under circumstances indicating his participation in the offence (namely with things used in the offence or obtained through the offence). When caught when escaping, he or she is not caught while committing an offence or pursued from the crime scene but caught on the escape.

169. The state attorney must always review why the matter has been urgent and whether it has really been impossible to receive authorisation. If he or she finds defects he shall notify in writing the superior of the respective investigator or police authority provided another urgent measure could not be applied (namely the release of the accused from the custody).

170. Article 8 of the Charter further states (Paragraph 3, 2nd and 3rd sentences):

Any detained person must be immediately informed about the reasons for his or her detention, interrogated and released or brought before a court within 48 hours. A judge shall interrogate and decide on custody of the person or release him or her within 24 hours after the detained person is brought before him.

171. Provided the state attorney does not order a release of the arrested person on the basis of the documentation he or she has received or a repeated interrogation he is obliged to hand him or her over[29] to the court within 48 hours since the detention, together with a proposal to place the person in custody. The state attorney shall attach the so far acquired evidence to the request. The 48-hour period replaced the past 24-hour period as of 1st January 1999 based on the amendment of the Rules of Criminal Procedure, No. 166/1998 of Coll., and a change in the Charter

(approved in a constitutional act No. 162/1998) because the law enforcement bodies believed 24 hours were inadequate.[30] It was the very first amendment of the Charter.

172. The judge is obliged to interrogate the detained person and to rule on the request by the state attorney within 24 hours and either release the person or place him in custody. In a pre-trial the court may decide on placing the accused in custody only if some of the reasons for custody listed in Article 67, Paragraph 1, of the Rules of Criminal Procedure is present and the evidence collected so far indicate that the offence described in the charge has been committed, it has all characteristics of a criminal offence and there are evident reasons for a suspicion that the offence has been committed by the accused.[31]

173. The judge shall promptly inform the chosen or *ex-officio* lawyer whose presence has been requested by the detained person (if he is available) and the state attorney about the date and venue of the interrogation. The lawyer and the state attorney can be present during the interrogation and ask questions of the detained person but only after the judge gives them the floor. Should the judge exceeds the period of 24 hours between the delivery of the state attorney's request on placing the detained person in custody he shall always release the accused.

174. The judge shall promptly inform a relative of the accused and his superior at work about his placement in custody. In case of a member of armed forces the judge shall also inform his commander. In case of a foreigner he shall inform the consulate of the foreigner's home country.

175. In the period under review the courts accepted about 90 per cent of requests by state attorneys to place the accused in custody. In 10 per cent of cases they refused the request either because they replaced the imprisonment by another measure (under Article 73 and 73a of the Rules of Criminal Procedure) or because, contrary to the belief of the state attorney, they did not see reasons for imprisonment. Exceptionally the accused was released due to exceeding the 24-hour limit (before the amendment of the Rules of Criminal Procedure No. 166/1998 of Coll.; after the amendment such cases have not been documented) because the courts wrongly interpreted the period of deprivation of liberty. If the delivery of a request to place in custody was preceded by detention or bringing the person to the police under Article 12, Paragraph 8, Article 13, Paragraph 5, Article 14, Paragraph 1, Letter a) to c), or Article 15, Paragraph 2 of the Act No. 283/1991 of Coll., on the Police of the Czech Republic, as later amended, the courts viewed such a period as closely related to the period of verifying the suspicion of an offence and added it to the period set by the law.

176. The placement of an accused in custody after detention (he or she may be already accused or be a suspect in an offence) is distinguished from custody of an arrested person. The Charter says in its Art 6, Paragraph 4:

> *An accused person may be arrested only on the basis of a written and substantiated order of a judge. Such an arrested person must be delivered before a court within 24 hours. A judge must interrogate the person brought before a court within 24 hours and decide about his or her custody or release.*

If some of the reasons for custody exists (Article 67, Paragraph 1 of the Rules of Criminal Procedure, see above) and it is not possible to subpoena, bring in or detain the accused and thus

arrange for his or her presence at the interrogation, the judge in pre-trial or the presiding judge shall issue, following a request by the state attorney, a warrant to arrest the accused. The arrest means to find the accused, detain him and briefly deprive him of liberty in order to bring him to the authority that has issued the warrant.

177. The arrest warrant is usually issued in pre-trial at the request of the state attorney; only exceptionally an arrest warrant is issued during. Apart from the information needed for not mistaking the accused with someone else the arrest warrant must include a brief description of the offence for which the accused is being prosecuted, definition of the crime under law, and an exact identification of the grounds for which the warrant is being issued. Based on the warrant the arrest shall be executed by the police who are also obliged to find the accused if it is needed for the execution of the warrant.

178. The police authority who has arrested the accused according to the warrant is obliged to promptly bring[32] him or her before the court whose judge has originally issued the arrest warrant. If, exceptionally, it is not possible (due to a long distance between the place of arrest and the location of the court whose judge has issued the warrant) the accused must be brought to another relevant court within 24 hours. If it does not happen the accused must be released. Contrary to detention, the 24-hour limit for depriving of liberty in case of an arrested person before bringing him before the court remains in place.

179. The judge to whom the accused has been brought must promptly interrogate him, decide about custody and inform the accused about the decision within 24 hours. If the interrogation is conducted by a different relevant judge than the one who originally issued the arrest warrant, this judge shall inform the issuing judge about the result of the interrogation. After getting the information the issuing judge then decides about the custody and informs the judge conducting the hearing of the accused about his decision. If the accused is not handed down a decision within 24 hours since he had been brought before the judge conducting the hearing he must be released (Article 69 of the Rules of Criminal Procedure). The accused has a right to require the presence of a lawyer at the hearing provided the lawyer can be reached within the set time limit.

180. The custody is always a matter of choice: if there is a concrete evidence that substantiates some of the above considerations (under Article 67, Paragraph 1, Letters a), b), c) of the Rules of Criminal Procedure) the accused may or may not be placed in custody. The authority deciding about the custody may leave the accused free or release him in case

(a) a civic association or a credible person capable of favourably affecting the behaviour of the accused offer a guarantee for the future behaviour of the accused, for his or her appearance at the trial, for informing the state attorney or the investigator in advance about leaving his or her place of residence, and the court or the judge in pre-trial accepts the guarantee as sufficient in view of the person of the accused and the nature of the case; or

(b) the accused submits a written oath promising to lead an orderly life, to avoid any criminal activity, and to fulfil all obligations and limitations imposed on him, and the court or the judge in pre-trial accepts the oath as sufficient.

181. In some cases the Rules of Criminal Procedure allow for substituting the custody by a financial guarantee - bail (Article 73a of the Rules). The amount of the bail is set by the court or judge who rules on the placement in custody. A minimum bail is 10,000 Czech crowns. This institute, similarly to other alternatives to custody, is not yet applied in sufficient numbers.

4. Guarantees against unlawful placement in custody and possibilities of release from custody

182. Merits of the charge are a general condition for placing a person in custody - i.e. the indictment of a person for whom the state attorney considers to submit a request for placing in custody must be based on sufficient evidence. Article 67, Paragraph 2 of the Rules of Criminal Procedure is usually interpreted in such a way that facts listed in this provision must be concrete and must provide a sufficient and reasonable basis for a substantiated suspicion that the committed act can be considered a criminal offence and it was committed by the accused. However, it is not possible to demand that the court rule with absolute certainty that it was really so already at this stage of the proceedings. Certainty without a reasonable doubt is necessary when deciding about guilt but it is usually unrealistic when deciding about placement in custody. On the other hand, the decision must not be based on some unsubstantiated suspicions without any concrete evidence that an offence was committed by the person.

183. When deciding about custody the judge must also consider the substantiation of the charge; however, the judge has no right to take any binding position in relation to the pre-trial participants, give these bodies any guidelines or order any action by them. Interference by the judge exceeding the interference with basic rights and freedoms in defined more serious cases is inadmissible in pre-trial.

184. The experience so far indicates that there are no principal conflicts between the positions of state attorneys and judges in evaluating the factual circumstances and grounds for a placement in custody. Disagreements - as mentioned above - relate mostly to the consideration whether some of grounds for custody as defined in Article 67, Paragraph 1, Letters a) to c) of the Rules of Criminal Procedure has been met or to the possibility of using some measure substituting the custody under Article 73 or 73a of the Rules and not to the actual substantiation of the charge that has been communicated. Nevertheless, cases occur in which, though there is an agreement between the state attorney and the judge, a decision on taking a person in custody is taken only on the basis of an insufficiently evidenced suspicion that will later prove to be completely unsubstantiated. Therefore, the responsibility of state attorneys in requesting placements in custody and of judges when deciding about custody will have to be the focus of major attention.

185. The issue of the substantiation of the indictment and decision on custody is particularly sensitive in cases of aliens for whom the custody to prevent escape (Article 67, Paragraph 1a) is used more often than in cases involving Czech citizens even when the offence is minor. The very fact that the accused is an alien should not be a sufficient reason for passing the decision on custody but in practice the state attorneys and judges often do so. And if, additionally, not enough consideration is given to the presented evidence, real discrimination of aliens who have been accused may result.[33]

186. The accused has a right to request a release from custody at any time. Should the state attorney does not meet such a request in the pre-trial he will promptly pass the matter to the court and will inform the accused about it. The court shall decide in the issue without delay. Should the request be refused the accused may repeat it but if he does not give new reasons he may do so only after 14 days from the date when the decision becomes effective (Article 72, Paragraph 1 and 2 of the Rules).

187. A complaint may be filed against any custody decision (Article 74, Paragraph 1 of the Rules of Criminal Procedure). However, only complaints filed by a state attorney against a decision on a release from the custody or against a decision to refuse a request to prolong the custody and complaints by parties against a decision on the escheat of the bail have a dilatory effect. At the same time, the state attorney is obliged to always attach his substantiated position to the request to the court for a release from custody.

188. There are sporadic cases of delays in passing decisions on requests for release from custody. The speed of decisions on requests for release from custody is adversely affected, among others, by a very busy traffic of files - namely in group cases when requests for release from custody are filed by several accused persons and repeatedly.

189. Under the present legislation on criminal procedure all law enforcement bodies (under Article 12, Paragraph 1 of the Rules of Criminal Procedure they include, first and foremost, the court, state attorney, investigator and police body) are obliged to review in each stage of the prosecution whether the reasons for custody continue and whether they have not changed. In the pre-trial stage the judge does it only when deciding on the request by the state attorney for the prolongation of custody (Article 71, Paragraph 1 of the Rules) and when deciding on the request by the accused for a release from custody (Article 72, Paragraph 1 of the Rules). If the reason for custody ceases to exist the accused must be promptly released.

190. The state attorney may also decide about the release of the accused in the pre-trial unless he or she simultaneously accepts an offer of a guarantee, promise or bail (Article 73, Article 73a of the Rules). In such a case he must present the matter with his position to the court that will pass the final decision.

191. In order to shorten the length of custody the law enforcement bodies are obliged - under Article 71, Paragraph 1 of the Rules of Criminal Procedure- to give priority to custody cases and to deal with them as quickly as possible. In every stage of the prosecution they are obliged to review whether the reasons for custody still exist and whether they have not changed. During the pre-trial and trial stages the custody may only last for a must period. If the reason for the custody ceases to exist the accused must be immediately released. In the pre-trial stage the decision on the release from custody may also be taken by the state attorney.

192. If the pre-trial custody exceeds six months and the release of the accused from custody could thwart the purpose of the prosecution or make its achievement more difficult the custody may be prolonged, on request by the state attorney, by a judge to one year or by a court to yet more but to two years at maximum. The duration of custody during trial combined with custody during pre-trial may not exceed two years. If it has not been possible to finalise the prosecution within this period due to the complexity of the case or other serious reasons and the release of

the accused could thwart the purpose of the prosecution or make its achievement more difficult the prolongation of the custody for the must period can be decided by a high court (Article 72, Paragraph 2 and 3 of the Rules).

193. Any prolongation of the custody period over two years is viewed as an exceptional authorisation to be used in extremely serious cases. Notwithstanding this provision, the number of persons for whom the custody was lengthened over two years in the period under review amounted to several dozens annually. The length of custody including the additional period must not exceed three years and in extremely serious cases (defined in Article 47, Paragraph 2 of the Penal Code as offences carrying a sentence to prison whose upper limit is not less than eight years) four years.

194. Unfortunately, there are still cases of persons placed in custody with no or almost no action by the prosecution taken for several months which adversely affects the length of the custody. The average length of the custody continues to range between 190 and 200 days. This situation should be seen as unsatisfactory because such a period is long enough for severing social relationships, losing positions in society and moral discrediting of the respective person.

195. During an abstract review of the legislation the Constitutional Court considered in 1994 a request to abolish the provisions of Article 67, Paragraph 1, Letter b) of the Rules of Criminal Procedure - custody to prevent collusion. The Court dismissed the request when it concluded that the provision was not in conflict with Article 5, Paragraph 1 of the European Convention on the Protection of Human Rights and Fundamental Freedoms. On the other hand, in another abstract review of the legislation (No. 214/1994 of Coll.) the Constitutional Court repealed the then existing provision of Article 55, Paragraph 2, Article 209 and provisions in Article 74, Paragraph 1 of the Rules of Criminal Procedure. In its decision the Constitutional Court limited the possibility to decide on the prolongation of the custody (under the then Article 72, Paragraph 2, 5 of the Rules) and ruled that the legal limits to the length of the custody must be seen as a limit for the period of a necessary deprivation of personal liberty of the accused or charged person needed for closing the case. In its finding the Constitutional Court said that stricter requirements should be placed on decisions on *additional* deprivation of personal liberty of a person who, in principle, must be presumed innocent than on the decisions to place a person in custody. The Constitutional Court, therefore, decided that, apart from the existence of lawful reasons for the custody, substantial reasons for not closing the prosecution in the passed period must be presented before deciding on lengthening the custody.

196. The Constitutional Court considered 25 complaints related to detention, arrest, custody, its lengthening and adequacy. In 15 cases it accommodated the complainer and stated violation of fundamental rights and freedoms, the other complaints were dismissed. About half of the cases were related exclusively to Article 9, Paragraph 3 of the Covenant. In the others the complainers cited or the Constitutional Court found violations of other provisions. The most frequent reasons for voiding the decisions passed by general courts in custody matters were insufficient reasons for custody to prevent collusion and a failure to meet conditions for custody set by law.

197. The ruling on a file with the reference No. III. ÚS 83/96 (vol. 6, Constitutional Court rulings) is of particular importance. In its finding the Constitutional Court said, among others,

that a certain period of time - specified in the ruling - could not be added to the period defined in the provisions of Article 71, Paragraph 4 of the Rules of Criminal Procedure. In an extensive substantiation the grounds were defined as procedural obstructions. The finding was very much discussed among both lawyers and laymen because, among others, it was not respected by the High Court in Prague though the Article 89 of the Constitution says that Constitutional Court decisions are binding for all institutions and individuals. The dispute was based on the fact that the substantiation of the Constitutional Court finding was not a part of the court ruling ("enunciate") which alone is a constitutionally binding document.

5. The enforcement of the right to compensation in case of unlawful arrest or custody

198. The Act No. 82/1998 of Coll., on responsibility for damages caused by exercise of public authority by decision or responsibility for damage caused in the course of exercising the public power by a ruling or an incorrect official procedure (see comments to Article 3) in its provisions in Article 9 and following defines the right to compensation for the damage caused by the decision on custody. The right is enjoyed by a person who has been placed in custody though the prosecution has been discontinued, the accused has been exonerated from prosecution, or the case has been delegated to another body. It is no more required to later rule that the decision on custody was unlawful. The reason for such a provision is the fact that at the time of deciding on custody less evidence of the type later considered in trial is usually available and, therefore, a decision on custody may be taken also in cases that would be later stopped, the prosecution exonerated or delegated to another body. No compensation is rewarded to person who is put in custody during an extradition procedure.

199. The injured party has a right to a compensation for a lost income and reimbursement of costs (including the fee of a defence counsel) incurred in the procedure in which the unlawful decision on custody has been passed. If the injured party does not apply for defining the lost income according to separate regulations the compensation will amount to 5,000 Czech crowns for each month in custody (Article 30 of the mentioned Act). In view of the average length of custody, growing average income in the population and growing differentiation in incomes the amount is ever more frequently viewed as insufficient.

200. The claim for compensation for the damage caused by the custody should be filed with the Ministry of Justice. The Ministry of Justice acts on behalf of the Government if the damage has been incurred in criminal procedure (but also civil procedure) and has been caused by courts or other law enforcement bodies involved in the respective case. In case the Ministry of Justice acknowledges a damage compensation it will be paid out within six months since the date of the claim. If it does not acknowledge the claim the injured party can sue for his claim. In the period under review the number of damage claims for custody is documented in Table 5 in Article 14 (compensation for a punishment served in prison).

201. The present legislation does not allow for a compensation of the damage caused by the decision on custody if the claimant is to be blamed for his own custody or he has been exonerated from the charge (or the prosecution has been discontinued) only because he is not criminally liable for the committed offence, he has been given a pardon or the offence is covered by an amnesty.

Article 10

202. Imprisonment in a jail or in similar conditions depriving persons of their liberty is strictly regulated by law. The conditions in which imprisonment is carried out are somewhat less precisely defined, namely of the rights of persons who are imprisoned or deprived of their liberty, and the obligations of persons and institutions who keep him in prison or deprive him of liberty.

203. The execution of custody is defined in the Act No. 293/1993 on the execution of custody which became effective on 1st January 1994 and the follow-up regulation by the Ministry of Justice No. 109/1994 which allowed for publishing the rules for executing custody effective on 3rd June 1994. The rules on custody say that the person in custody has a right for the protection of his personality against unjustified violence, any degradation of human dignity, offence or threats. The Prison Service employees shall report all such cases which they identify to the respective authorities and will take immediate measures for preventing such behaviour.

204. Among others, persons in custody have a problem with access to mail. Under Article 12, Paragraph 1 of Act No. 59/1965 of Coll., on the execution of prison sentence, as later amended (which was replaced, effective from January 1, 2000, by Act No. 169/1999 of Coll., on the execution of prison sentence and changes in some connected acts, in the wording of Act No. 359/1999 of Coll.), the sentenced prisoner can receive letters and send out letters at his own cost without any limitation; there is, however, no legally binding time limit for mailing letters by an accused who was placed into custody in order to prevent collusion. Letters by the accused to international organisations which are defined in the Constitution of the Czech Republic as dealing with submissions on the protection of human rights are not being censored. Furthermore, censorship is inadmissible (only) in cases of correspondence between the accused and his lawyer and government institutions of the Czech Republic.[34]

205. Under the law on the execution of custody the accused has a right to receive a visit to the prison of maximum four persons for 30 minutes once in three weeks. In justified cases the governor of the prison may allow a visit sooner than in three weeks or for more than 30 minutes. Visits to the accused in custody in order to prevent collusion require a prior written approval of the court and in pre-trial period of the state attorney. A representative of a law enforcement body may also be present at visits requiring a prior written approval. It still happens that some accused stay in custody for several months without any contact with their relatives.

206. The Prison Service paid special attention to the custody of juveniles. Act No. 293/1993 of Coll. and rules on the execution of custody stress that any reduction of the 3.5 m^2 minimum limit per person, which is often a case with other accused, is inadmissible in case of accused juveniles or an accused pregnant woman.

207. As to the execution of the prison sentence, the Penal Code states in Article 23, Paragraph 2 that the execution of the prison sentence must not degrade human dignity. In the period under review the execution of the prison sentence was regulated by Act No. 59/1965 of Coll. on the execution of the prison sentence, as later amended; newly by Act No. 169/1999 of Coll. on the execution of prison sentence.

208. Disciplinary punishments further limiting the liberty of both sentenced and persons in custody - placement in a solitary cell or a closed section of the prison - are not imposed by a judge but by a member of the Prison Service. The rights of the prisoner in such a procedure are not regulated in the same way as in criminal of transgression procedure.

209. Health service provided to the sentenced and accused in prison and custody is "of adequate standard and, in particular, comparable to health service provided to the population at large" (CPT report of 1997). Many health problems of prisoners are not caused by the standard of the health service as such but rather by stress caused in overcrowded prisons. Partial deficiencies include the fact that a final stage of pregnancy or a serious illness do not constitute a reason for recommending the release of the accused or sentenced prisoners on health grounds and that the prisons often are not capable to accommodate handicapped prisoners.

210. A system of internal checks and controls is applied in the prison system. Under Article 4, Paragraph 1 of Act No. 555/1992 of Coll., on the Prison Service and court guards it is the Minister of Justice who controls the Prison Service through its general director. This Minister supervises and checks the execution of custody under the Act on the execution of custody, he supervises and checks the execution of prison sentences under the Act on the execution of prison sentence. A special department was constituted at the Ministry of Justice to supervise and check the execution of custody and sentence imprisonment. As to the checks, individual heads of sections in charge of inspection report to the general director of the Prison Service; in individual prisons and custody checks are carried out by all management staff, i.e. prison governor, heads of departments and sections. A department for inspection and prevention has been established at the general directorate of the Prison Service to monitor the application of the general directorate's instruction on internal checks of activities and on annual plan of inspections.

211. No external controls in prisons are defined in the acts on execution of prison sentence and execution on custody; in the period under review the previous provision on external control was repealed without compensation. Under the present rules of procedure in the Chamber of Deputies only members of the subcommittee for prisons of the Committee for Defence and Security can inspect prisons. It is, however, only a theoretical and insufficient option because there is no clear definition of members' powers and their visits in prisons are not registered.[35]

212. Any improvement of the present situation in prisons is hampered by an objectively poor financial situation. Prisons are permanently overcrowded and the minimum limit of 3.5 m^2 per prisoner, which can be reduced only in exceptional circumstances and only for a defined period of time, has not been met in practice since 1994. The above mentioned CPT report criticized not only the overcrowding of prisons but also a small accommodation area per prisoner. The achievement of a standard comparable with the EU countries is thus limited by the lack of funds, poor technical conditions and furnishing of prisons, effects of long-term overcrowding and understaffing of their services.

213. The number of prisoners, both sentenced and in custody, is relatively high when compared to the total population of the country. It is, however, a positive development that the proportion of the accused among the prison population is gradually decreasing. Apart from investing into the prison system an effort should be made to reduce the number of the accused and sentenced in prisons by application of alternative procedures allowed by the Rules of

Criminal Procedure and the Penal Code, which should help reduce the overcrowding problem. These procedures include a release on probation, alternative punishments, conditional suspension of criminal prosecution, mediation, etc., all of which have not been applied sufficiently, though a clear upward trend is visible.

214. The development in numbers of persons in custody and sentence prisons in the period under review is illustrated in the following table:

Year	Accused	Sentenced	% of accused	Total
1993	7 810	8 757	47,1	16 567
1994	8 828	9 925	47,1	18 753
1995	8 000	11 508	41,0	19 508
1996	7 887	12 973	37,8	20 860
1997	7 736	13 824	35,9	21 560
1998	7 125	14 942	32,3	22 067
1999 (till 19 November)	7 176	16 349	30,5	23 525

215. In disciplinary punishments in the armed forces, which represent an extreme corrective measure used when other measures taken by the commander have failed, no major problems of human rights violations have been found. An enlisted man in armed forces or alternative service and in military exercise (up to lance-corporal) can be punished by up to 14 days in his military unit prison. The punishment is decided upon by an officer from the rank of a battalion commander upwards (a disciplinary punishment of up to 7 days) and the unit commander or his superiors (disciplinary punishment of up to 14 days of prison). The disciplinary punishment of imprisonment was generally regulated by the Act No. 76/1959 of Coll., on some service contracts of soldiers, as later amended, and it is detailed in the regulation called the Basic Rules for the Armed Forces in the Czech Republic (Zákl-1). As of 1st December 1999 the problem is regulated by Section 3 of Act No. 220/1999 of Coll., on the service of enlisted men in the armed forces or alternative services and military exercises and on some legal status of reservists.

216. The treatment of persons deprived of liberty is discussed in detail in the initial (1993) and 2nd periodical (for the period of 1994-1997) reports on measures adopted to comply with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Article 11

217. The Charter states in Article 8, Paragraph 2:

> *(2) ... No one shall be deprived of liberty merely on the grounds of inability to fulfil a contractual obligation.*

The Czech legislation does not include any provision that would allow for a deprivation of liberty of a person for a mere inability to fulfil a contractual obligation. No "prisons for debtors" exist.

218. In relation to the rapid development of a private enterprise after 1989 accompanied by the emergence of a new type of economic crime the law enforcement bodies face major difficulties in investigating many cases of failing to fulfil contractual obligations. In many cases, especially in secondary insolvency, it is objectively difficult to decide whether the failure to meet a contractual obligation was caused by lack of experience or bad estimate or whether it was an intention to commit a fraud (Article 250 of the Penal Code), tax evasion (Article 148 of the Penal Code) or another criminal offence. In this respect it is necessary to prove that the respective person has intended, since the very beginning, to mislead another person, to use the person's disinformation for his own or another person's enrichment. The intention is usually proved on the basis of objective facts.

Article 12

219. The Charter states in its Article 14:

> *(1) The liberty of movement and liberty in choosing a residence is guaranteed.*
>
> *(2) Any person who is lawfully present on the territory of the Czech Republic shall be free to leave it.*

The guarantees of a free movement and free residence represent one of the most significant changes as compared to the situation in the Czechoslovak Socialist Republic before 1989.

220. Under Article 14, Paragraph 2 of the Charter, Article 12, Paragraph 2 of the Constitution, and Article 14, Paragraph 4 of the Charter the presence of a citizen of the Czech Republic on the territory of his home country can never be unlawful. Under the Act No. 216/1991 of Coll., on travel documents and travelling abroad, as later amended, a Czech citizen may travel abroad provided he has a valid travel document issued by the Czech Republic and he crosses the boarder through any of the border crossings designated for international travel. Above standard conditions apply in some border areas and particularly to all Czech citizens travelling to Slovakia, where an ID card is sufficient and the border can be crossed anywhere, not only on border crossings. The same applies to Slovak citizens travelling to the Czech Republic.

221. However, foreigners stay in the Czech Republic both legally and illegally. Under the alien legislation (Act No. 123/1992 of Coll.) a foreigner may enter the territory of the Czech Republic, stay on the territory and leave it only with a valid travel document with a Czech visa provided an international agreement binding for the Czech Republic does not provide otherwise. Visa is not required if the Government decides so. The issues concerning aliens staying on the territory of the Czech Republic is described in more detail in the commentary to Article 2. Expulsion of an alien is described in Article 13.

222. In addition, the Charter states in the mentioned Article:

> *(3) Such liberties may be limited by law provided it is necessary for the security of the country, maintenance of public order, protection of health or rights and liberties of others and in defined areas also for environmental conservation.*

(4) Each citizen has a right for a free entrance to the territory of the Czech Republic. A citizen may not be forced to leave his country.

Partial lawful limitations of such liberties occur e.g. in the application of Act No. 114/1992 of Coll., as later amended, on the conservation of nature and landscape (special rules for movement in national parks, etc.).

223. A major limitation of the repressive character is defined in Article 57a of the Penal Code - prohibition of the stay in the country. Under this provision the court may bar the stay for one to five years in case of a premeditated offence, if it is required by the previous way of life of the offender and the place of committing the offence, protection of public order, family, health, morale and property. Such a punishment, however, cannot be related to the place or district of the offender permanent residence.

224. Article 171 of the Penal Code, obstruction to the execution of an official decision, is connected with the previous article, stipulating that a person who stays in a place covered by the prohibition of stay without permission or relevant reason shall be punished by up to one year imprisonment. The application of Article 57a followed by Article 171 of the Penal Code seems, however, somewhat problematic in relation to a growing category of persons without any officially registered permanent place of residence or those who do have such an officially registered place of residence but actually stay elsewhere.[36] It happens that such persons first receive a sentence of prohibition of their stay in the respective place or district, and subsequently they are sentenced to imprisonment for the obstruction of the execution of an official decision should they stay in that place.

Article 13

225. In its Article 14, Paragraph 5, the Charter states:

An alien may be expelled only in cases defined in law.

(a) Expulsion of an alien by court

226. The Czech Republic bases its legislation on Article 13 of the Covenant, i.e. on the assumption that the alien is present on the territory of the state lawfully, having crossed the border of the State Party to the Covenant lawfully, i.e. in compliance with the relevant provisions of the law on aliens. In such a case he may only be expelled in pursuance of a valid decision by a court.

227. An alien may be expelled by a court only in compliance with Article 57 of the Penal Code and Article 350c of the Rules of Criminal Procedure. Under this provision an alien who is not a citizen of the Czech Republic or a person who has been granted a refugee status may be sentenced by court to expulsion from the territory of the Republic; it can be imposed as a separate sentence or in combination with another sentence provided it is required for protecting the safety of the people or property or another general public interest. In the procedure before the court the alien may use all regular and extraordinary remedies.

228. The above provision does not distinguish whether the offender who is not a citizen of the Czech Republic is present on its territory or in another country. It is, therefore, possible to hand down a sentence of expulsion in a situation when the offender who is not a citizen of the Czech Republic is abroad at the time of the trial. The purpose of such an expulsion is to prevent the person from re-entering the territory of the Czech Republic.

229. The expulsion procedure is organised as follows:

(a) If an alien is released and a date of expulsion is set the Alien Police directorate, following a request by the court, provides him with duplicate travelling documents.

(b) If an alien is placed in a pre-expulsion detention the Alien Police, following a request by the court, issues a duplicate travelling document and executes the actual expulsion of the person. If the alien is a citizen of a neighbouring country, the police arranges his handing over at a specific border crossing, it informs about the fact the Prison Service of the Ministry of Justice who escort the alien to the border. In case the alien is a citizen of the Ukraine the Alien Police arranges for a police escort across the territory of the Slovak Republic. If an air transport of the alien is necessary the Alien Police purchases the air ticket and, if required, also provides an escort on board of the plane.

230. Two amendments of the Penal Code related to the expulsion by court have strengthened the certainty of aliens that they will not be extradited or returned to a country where they would be in danger of persecution. As of January 1st 1994 effective has been an amendment of Article 57 of the Penal Code (No. 290/1993 of Coll.) that prohibits expulsion of a person who has been granted a refugee status. The new provision protects against expulsion of those who have been granted a refugee status in the Czech Republic in the sense of the 1951 Geneva Convention and Protocol on the legal status of refugees and who committed an offence and does so not only in relation to the country of origin but also in relation to third countries.

231. Another amendment of the same provision in Article 57 of the Penal Code was adopted in 1997 (No. 253/1997). Under the new Article 57 of the Penal Code, Paragraph 3, Letter d) the court cannot decide on a punishment of expulsion if there is a danger that the offender will be persecuted in the country where he or she should be expelled to for his or her race, nationality, membership in a certain social group, political or religious belief, or if the expulsion would expose the offender to torture or inhuman of degrading treatment or punishment. This amendment of the Penal Code entered into force on January 1st 1998.

232. Additionally, the mentioned Article 57, Paragraph 3 of the Penal Code states that the court will not decide on a punishment of expulsion if the nationality of the person has not been established or if the person who has been granted a long-term residence permit in the Czech Republic, has a job and a social background in the country and such a punishment would go against the interest in uniting families. The new wording of the provision thus makes it impossible for the court to expel from the Czech Republic aliens who have direct links on its territory which was a practice used before the amendment came into force. A new Paragraph 2 allowed for a punishment of expulsion limited in time - *"for one to ten years, or without any*

time limit". After the amendment was passed the President of the Republic pardoned in an amnesty declared on February 3rd 1998 punishments of expulsion or their portions, which had not been served out yet, imposed for offences punishable under law by a maximum of five years in prison on persons who were citizens of the CSFR as of December 31st 1992.

(b) Administrative expulsion

233. An expulsion in the sense of Article 13 of the Covenant should be distinguished from the so- called administrative expulsion under Article 16 of the Act No. 123/1999 of Coll., as later amended (which was regulating the issue in the period under review; as of January 1, 2000, it was replaced by Act No. 326/1999 of Coll., on the stay of aliens on the territory of the Czech Republic), under which an alien could be expelled if he or she has entered into or stayed in the Czech Republic unlawfully. Under the alien law the decision on expulsion is taken by police authorities.

234. If an alien has a valid travel document and an expulsion procedure has been started he is detained and placed in a police cell. Such a pre-expulsion detention is governed by Article 15, Paragraphs 1 and 2 of Act No. 283/1991 of Coll., on the Police of the Czech Republic, under which the police officer is authorised to detain a person

(a) who has committed an act for which his stay on the territory of the Czech Republic may be discontinued or for which he may be expelled; or

(b) who should be expelled pursuant to an enforceable decision (see above - expulsion by court); or

(c) against whom an expulsion procedure has been initiated and there is a substantiated suspicion that the person would not submit to the expulsion decision or will obstruct the execution of such a decision; or

(d) in case of a justified assumption that the person has entered unlawfully or stays unlawfully on the territory of the Czech Republic and the expulsion procedure could not be initiated because of the failure to establish his identity.

235. Under the law an alien may be detained for 30 days (Article 15, Paragraph 3 of the Act on the Police) though the police strives for the shortest possible detention before expulsion.[37] If the alien does not have a valid travel document the 30-day detention period is usually fully used. In many cases the foreign embassies do not manage to verify the alien's identity and to issue a duplicate travel document. In such cases the alien is released from the police cell after the 30-day period. For leaving the territory of the Czech Republic the aliens are issued an exit visa which is usually valid for 30 days. A lack of legislation on conditions (rights of the person to be expelled) in the detention cell is a problem which will have to be dealt with promptly.

236. The section for refugees and integration of aliens at the Ministry of Interior is in charge of the procedure of granting a refugee status. The section systematically collects and examines information on the countries of origin of persons applying for a refugee status looking for any mass violations of human rights. In justifying its refusal to granting a refugee status the

competent authority may recommend, if it finds reasons for that, not to extradite or return the applicant-alien to a country where he came from or where his life or liberty have been be threatened. Additionally to the provisions of Article 13 of the Covenant, the following international commitments of the Czech Republic are taken into account in the procedure of granting a refugee status:

(a) Article 33 of the Convention on the legal status of refugees with its *non-refoulement* principle;

(b) Article 3 of the Convention on human rights and basic freedoms which prohibits torture;

(c) Article 3 of the Convention against torture and other cruel, inhuman or degrading treatment or punishment.

237. Articles of the above conventions are applied without exception in the asylum procedure. The Czech Republic respects the principle of non-refoulement and does not return refugees, or applicants for a refugee status, to countries where their life or liberty would be threatened or where they would be in danger of persecution. In compliance with Article 3 the Czech Republic has not returned refugees fleeing from countries suffering from military conflict, e.g. Bosnia-Herzegovina.

238. The total number of aliens expelled by courts or, and namely, by administrative authorities was growing in the period under review. The following table No. 4 indicates the numbers of persons expelled during the period under review, i.e. since 1993 to the end of April 1999.

Year	Administrative Expulsions	Expulsions by Court	Total
1993	366	364	730
1994	363	413	776
1995	297	612	909
1996		696	1 065
1997	736	802	1 536
1998	1 519	727	2 246
1999 (till 30 April)	590	346	936

Article 14

1. Equality before courts, public hearing

239. The Charter states in Article 37, Paragraph 3.

All parties are equal in the procedure.

This principle is applied both in civil and criminal procedure.

240. Article 38, Paragraph 2 of the Charter further states:

> *Everyone has a right to have his case heard publicly, without undue delays and in his presence and to have his opinion heard on all evidence presented. The public may be excluded only in cases defined by law.*

241. Criminal cases are heard publicly in the Czech Republic. The public may be excluded only for reasons defined by law. It is applied, for example, in cases against juveniles if it could serve to their benefit (Article 297, Paragraph 3 of the Rules of Criminal Procedure).

242. The court ruling shall always be pronounced publicly by the presiding judge. Full wording of the sentence, part of the grounds for the judgement and information about an available remedy shall be presented. As a rule, the sentence is read immediately after the procedure is completed. If it is not possible the court may adjourn the pronouncement for maximum of 3 days (Article 128 of the Rules of Criminal Procedure).

243. There is, however, an exception from the right to the principle of a public hearing, namely the possibility to issue, in cases strictly defined by law, a so called punishment order (Article 314e - 314g of the Rules of Criminal Procedure). It is a form of decision by court or single judge without hearing the parties in trial. The maximum sentence that can be imposed by a punishment order is one year in prison. The accused may always secure a hearing in a public and two-instance proceedings (through submitting a so called objection in law within the lawful deadline), nevertheless, the punishment order as an instrument of decision is one of the controversial issues in view of the rights and liberties guaranteed in Article 14 of the Covenant.

2. Respect for the presumption of innocence

244. The presumption of innocence principle in the rules of criminal procedure (Article 2, Paragraph 2) says that until proved guilty according to law and until a respective sentence comes to force, the defendant in a criminal trial may not be viewed as guilty. This regulation is based on Article 40, Paragraph 2 of the Charter:

> *Everyone who stands a criminal trial shall be presumed innocent until proved guilty according to law.*

This principle is related to the general principle of *presumptio boni viri* - everyone is righteous until proved otherwise. The presumption of innocence principle does not mean the law enforcement bodies could not take a subjective position that the person standing trial has committed the crime, were obliged to view him as innocent in this respect, and were not authorised to apply to him means defined in law. It is always an expression of an objective legal situation from the point of view of the law.

245. The following rules stem from the presumption of innocence principle:

(a) An accused (defendant) is not obliged to prove his innocence or any other facts attesting to his innocence in relation to the decision on punishment, or protective measure, or a compensation of damage. It is not possible to deduce that when an

accused (defendant) has not denied a certain fact the statement is untrue and its opposite is true. An accused (defendant) has a right to present circumstances and evidence to such circumstances for his defence. The law enforcement bodies are obliged to consider such defence. An accused (defendant) may not be in any way compelled to make a statement or confession (Article 92, Paragraph 1, 2nd sentence of the Rules of Criminal Procedure).

(b) In dubio pro reo principle meaning that when any reasonable doubts remain about the guilt of an accused (defendant) after the presentation and careful analysis of all reasonably accessible evidence or any other doubts about facts significant for the decision that cannot be removed by presenting more evidence the decision must be in favour of the accused. If the guilt of the accused is not fully proved a verdict of acquittal must be pronounced (this is also reflected in the structure of the grounds for acquittal under Article 226, letters a) to c) of the Rules of Criminal Procedure, as well as differing formulations of grounds for waiving prosecution under Article 172, Paragraph 1, Letter a) of the Rules of Criminal Procedure and grounds for dismissing the defendant under Article 226, Letter a) of the Rules of Criminal Procedure). Unproved guilt has the same meaning as proved innocence. The above principle, however, is valid for factual issues only, it does not apply to legal issues.

(c) The law enforcement bodies are obliged to be impartial and unbiased in their dealings with the accused (defendant), they shall pay identical careful attention, even without a proposal, to both the circumstances favourable for the accused (defendant) and circumstances detrimental to him. Not even a confession of the accused (defendant) frees them of the obligation. They are always obliged to inform the accused about his rights and give him full opportunity to apply them (Article 33, Paragraph 3 of the Rules of Criminal Procedure).

(d) During the criminal proceedings only restrictions defined in law and necessary for successful proceedings can be ordered; the principle of restraint and adequacy applies. In criminal proceedings only such means of coercion can be used against the accused (defendant) that are explicitly defined in the Rules of Criminal Procedure, while another condition must be met, namely that the means are necessary for achieving the purpose of the criminal proceedings.

246. The Constitutional Court examined four cases of the application of the presumption of innocence principle from the point of view of basic rights and freedoms in preceding trials; one was an abstract check of norms, the other three constitutional complaints against an alleged violation of the presumption of innocence principle. In two cases the Constitutional Court acquitted the claim and repealed the preceding decisions by general courts, the third claim was dismissed. In one case (file No. II. ÚS 406/97) the Constitutional Court explicitly cited a violation of Article 14, Paragraph 2 of the Covenant.

247. Another threat to the right guaranteed in the Covenant may bee seen in the fact that media often describe a suspect in a criminal offence as a perpetrator of the offence with no respect for the presumption of innocence. The general public also has a tendency to disregard the

difference between custody and sentence and to view the decision on custody as a verdict of guilt. To surmount such stereotypes will take more time and education.

3. Minimum guarantees in criminal proceedings

(a) Right to be informed in a language the accused understands (Article 14, Paragraph 3a) and to get assistance of an interpreter (Article 14, Paragraph 3f of the Covenant)

248. Article 37, Paragraph 4 of the Charter states

> *Everyone who says he does not understand the language of the proceedings has a right to assistance of an interpreter.*

Under Article 2, Paragraph 14 of the Rules of Criminal Procedure everyone has a right to use his own language before the law enforcement bodies. The law enforcement bodies conduct the proceedings and write their decisions in Czech.

249. The above provision guarantees to all parties to the proceedings the right to use their own mother tongue. The same right belongs to the accused (defendant), the damaged party, participating persons, witnesses, etc. In practice, however, there is often a problem to inform the accused promptly indeed, as required in Article 14, Paragraph 3f of the Covenant; the scope and completeness of information provided to aliens may also pose a problem.

250. An interpreter shall be invited to assist in the criminal proceedings not only when the accused declares he does not understand the language of the proceedings (after the split of Czechoslovakia it is Czech only, Slovak is no more considered a language of the proceedings), but also when it is necessary to translate the contents of a testimony or a document (Article 28 of the Rules of Criminal Procedure). An interpreter shall be invited also in cases when the respective law enforcement body understands and speaks the language of the accused or another interrogated person. The absence of an interpreter represents a curtailment of the right of the accused to legal assistance under Article 33, Paragraph 1 of the Rules of Criminal Procedure. Such a lapse in pre-trial may serve as grounds for returning the case to the state attorney for additional investigation under Article 188, Paragraph 1, Letter e) of the Rules.

251. Only a person meeting all conditions defined in Act No. 36/1967 of Coll., on experts and interpreters, as later amended, may act as an interpreter in criminal proceedings. Under the regulation No. 37/1967 of Coll., the law enforcement bodies must first request a service of an interpreter from specialised institutes for interpretation and when it is not possible to request the service from such institutes they must choose an interpreter from a list of certified interpreters kept with the respective regional court. It is not a condition for the assigned interpreter to be a Czech national.[38] If the law enforcement body intends, under the conditions of Art 24, Paragraph 1 of the act on experts and interpreters, to assign a person who is no. on the list of interpreters, the qualification of such a person for interpreting may be examined (Article 11, Paragraph 2 of the regulation No. 37/1967 of Coll.). A person who has acted in the case as an interpreter cannot later act in the same case as a law enforcement body. Obviously, the position of an interpreter is also incompatible with that of a witness.

252. A so-called obligatory legal assistance under Article 36, Paragraph 2 of the Rules of Criminal Procedure (see below) is applied when the accused does not understand Czech, i.e. the accused must have a defence counsel in the proceedings and if he does not choose one a counsel is assigned to him. The counsel receives a copy of decisions and measures taken in pre-trial and his role is to inform the accused about the contents of the documents. The amended Rules of Criminal Procedure (No. 292/1993 of Coll.), effective as of 1st January 1994, obliged the law enforcement bodies to conduct proceedings and produce their decisions in Czech thus regulating the working (not official) language in criminal proceedings. The pre-trial documentation issued in Czech is delivered to the persons not understanding this language without translation into their mother tongue. Under Article 2, Paragraph 13 of the still effective Rules of Criminal Procedure, oral translations of the contents of presented evidence, documents under examination, pronounced decisions and measures are sufficient for the accused who does not understand Czech (or understands it but uses his right to use his mother tongue) to secure his rights and for the law enforcement bodies to meet their obligations.

253. The present practice, however, faces a growing criticism on the ground that it does not give a sufficient guarantee of equality before the law and of the right of an accused alien to defence. The fact that both the charge and the 1st instance sentence (before an appeal is filed) is delivered to an alien not speaking Czech in principle only in Czech (including such deliveries of documents into custody) is viewed by some lawyers as a violation of both the Charter and the Covenant.[39]

254. The Constitutional Court has found a violation of Article 37, Paragraph 4 of the Charter and Article 14, Paragraph 3, Letter f) of the Covenant in the case with file No. III. ÚS 287/96 when an interpreter was not present during a house search conducted as a part of criminal proceedings. The Constitutional Court, however, has not found any violation of Article 14, Paragraph 3, Letter a) of the Covenant in any of the examined cases.

255. Nevertheless, the prepared amendment of the Rules of Criminal Procedure provides for an alien who declares he does not understand Czech to have a right to receive translations of the decision to initiate criminal prosecution, on custody, of the charge, sentence, punishment order, decision on appeal, and potentially other important documents. It is assumed this amendment of the Rules of Criminal Procedure and related legislation would come into force on 1st January 2001.

(b) <u>The right to the preparation of defence and to a defence counsel of his own choosing</u>

256. In its Article 40, Paragraph 3 the Charter guarantees to the accused the following rights:

> *The accused has a right to have time and facilities for the preparation of his defence and to defend himself in person or through legal assistance. If he does not choose a defence counsel, though he must have one under the law, the court will assign a counsel to him. The law regulates the conditions in which the accused has a right to free legal assistance.*

257. Under Article 36 of the Rules of Criminal Procedure on obligatory legal assistance the accused must have a defence counsel already in pre-trial:

(a) if he is in custody, sentence prison, or in a health institution for observation;

(b) if he is declared incompetent of legal acts or if his competence to perform legal acts is limited;

(c) if it is a case against a juvenile;

(d) if it is a case against an escapee.

258. Additionally, the accused must have a lawyer - under Article 36, Paragraph 2-4 of the Rules of Criminal Procedure - if the court and the investigator or state attorney in pre-trial see it as necessary, namely due to the physical or mental handicap of the accused they have doubts about his ability to duly defend himself. Obligatory is the presence of a defence counsel in trials for criminal offences for which according to law the upper limit of prison sentence exceeds five years, in extradition trials and trials deciding on protective medical treatment (does not include treatment of alcohol addiction). Limitation of personal liberty (detention) in itself, however, is not a reason for obligatory legal assistance which means that when deciding on placing the person in custody the person does not have to be represented by a lawyer. If such a person does not have enough money or has insufficient information about his or her rights, he or she can be disadvantaged at court because he is unable to refute the arguments leading the court to the decision on custody.

259. If the accused does not have a defence counsel in cases in which he must have him a deadline for choosing a lawyer is set for him (under Article 38 of Rules of Criminal Procedure). If the lawyer is not chosen before the deadline a lawyer will be promptly assigned to the accused for the period for the period in which grounds for obligatory legal assistance exist. The 1991 amendment of the Rules of Criminal Procedure introduced the obligation to promptly assign a lawyer to the accused with the aim not to unduly prolong the time when the accused is without legal assistance because he has not chosen a lawyer.

260. During the time when the accused does not have a lawyer though he should have him only such investigative steps which, due to the danger of their frustration, loss or substantial weakening of their value as evidence or of loss of additional evidence, i.e. in view of the purpose of the criminal proceedings (Article 1, Paragraph 1 of the Rules of Criminal Procedure), cannot be delayed until the accused has a lawyer. Any other investigative steps performed in the period when the accused has not had a lawyer though he should have him under Article 36 of the Rules of Criminal Procedure is viewed as a violation of the right of the accused for legal assistance. In practice, however, it is rather problematic to decide whether the investigative steps cannot be delayed until the accused has a lawyer. Problems occur also in case the client or the lawyer refuse the assignment in cases of obligatory legal assistance. In such a case another lawyer should be assigned; it may, however, mean that problems caused by the change of a lawyer can result in a situation of the accused placed in custody not having a lawyer for a longer period of time.

(c) Right to be tried without undue delay

261. Article 38, Paragraph 2 of the Charter states:

Everyone has a right to public hearing of his case without undue delay...

Nevertheless, there are delays in practice both in civil and criminal cases. The slowness of court proceedings is one of the most serious problems faced by the Czech judiciary at present. In criminal cases the situation is made worse, among others, by high numbers of custody cases which must be given priority in courts.

262. However, the implementation of the right to be tried without undue delay does not at present depend on the courts only; important is the speed of investigation which is affected by the numbers of staff and qualifications in the individual offices of investigation of the Police of the Czech Republic. The length of investigation is adversely affected by the ever more complicated economic crimes which require team work, yet there is still a lack of specialists for such teams. The speed of investigation is substantially affected by the quality of state attorney supervision in criminal pre-trial. In this respect the Rules of Criminal Procedure (Article 174, Article 157, Paragraph 2) equip state attorneys with a range of significant powers. The Supreme State Attorney Office requests from state attorneys a more active attitude to supervision over investigation in order to prevent delays in the investigation. Also the fact that the witnesses and the accused repeatedly fail to appear for interrogation, combined with the unwillingness of some citizens to testify due to either their subjective feeling that law enforcement bodies are incapable of dealing with criminality and they are afraid of the potential revenge by the perpetrators, contribute to delays.

263. In 1994 the Constitutional Court (file No. IV. ÚS 173/94) stated the lack of respect for "the reasonable time" for penal trial. According to the Constitutional Court finding a lack of staff, i.e. investigators, state attorneys or judges - even more so when the case is not complicated, cannot be a reason for delays.

264. Nonetheless, over the period of 1993-1998[40] there is a gradual trend towards speeding up the pre-trial and investigation stages. Over the whole period, with the overall amount of closed cases remaining more or less equal or higher, the number of persons investigated for one week to two months gradually grew, while the number of persons investigated for more than six months, one year, two years and more than two years decreased. The proportion of cases investigated for more than two years dropped in 1998 to some 4%. Gradually growing is the number of criminal cases in which pre-trial lasts a few days at maximum - cases simple in merit and evidence, namely obstructing the execution of official decision under Article 171, Paragraph 1, Letter b) of the Penal Code. Relatively substantial regional differences, however, should be noted in all the above parameters.

265. An increased activity of district and regional state attorneys in pre-trial supervision has proved to be of a certain benefit. More attention was paid to the speed of investigation, as a part of their supervision function, by both High State Attorney offices. An important role was played also by the pressure by the Office of Investigation of the Czech Republic and regional

investigation offices to speed up the investigation and its quality. The work of state attorneys speeded up as well; the proportion of cases closed by state attorneys within one month exceeded 80%.

266. Some existing options have not been used sufficiently. The procedure under Article 307 of the Rules of Criminal Procedure that allows for a request to suspend criminal prosecution could help speed up the trial. In practice, such requests are usually delivered to state attorneys together with a request to file a charge as a sort of alternative and, consequently, the case is usually not speeded up. It should be noted, however, that the main purpose of a suspended criminal prosecution is not to speed up the investigation. A more suitable for this aim should be seen in the institute of settlement (Article 309 to Article 314 of the Rules of Criminal Procedure), which has not been applied very often either.

267. Among the purposes of the penal procedure amendment which should be effective on 1st January 2001 is to simplify and speed up criminal proceedings and thus to eliminate undue delays in the proceedings (Article 38, Paragraph 2 of the Charter), or trial without undue delay (Article 14, Paragraph 3, Letter c) of the Covenant, Article 6, Paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms).

(d) Other rights of the accused in criminal proceedings

268. The accused has a right to have his say to all facts he is blamed for and to all related evidence but he is not obliged to testify. The Charter states in its Article 40, Paragraph 4:

> *The accused has a right to refuse to testify and he cannot be deprived of this right in any way.*

The Rules of Criminal Procedure in its Article 33 provide that an accused has a right to have his say to all facts he is blamed for and to evidence related to those facts but he is not obliged to testify. He or she can cite circumstances and evidence in his defence, submit proposals and claims, propose remedies. All law enforcement bodies are obliged to always inform the accused about his or her rights and to provide him or her with all possibilities to apply them.

269. In terms of defence, under the cited law the accused has a right to consult with his lawyer even during the acts conducted by a law enforcement body. He or she cannot, however, consult with his or her lawyer how to answer a question already asked during interrogation. He or she can request to be interrogated with his or her lawyer present and for the lawyer to be present at other pre-trial stages. If the accused is placed in custody or sentence prison he or she can communicate with his lawyer in private without any third person present. This strengthening of the rights of the accused - together with the repeal of some unjustified restrictions of the right to legal assistance - were already included in the first penal procedure amendment adopted after the democratic changes (in 1990).

270. If the accused does not have sufficient means to pay for his defence he has a right to a free legal assistance or for a lawyer who will be paid a lower fee.

271. In practice there are some problems with implementing the right to legal assistance and the reasons are mostly the following:

(a) poor legal awareness of the accused: they do not know their rights, they do not understand the information provided, they confuse the position of an assigned lawyer with a free legal assistance, etc.;

(b) actual disadvantage for less wealthy accused: if they have no money their possibilities to choose a lawyer is rather limited;

(c) failure of some assigned lawyers in their obligations to their clients: some assigned defence counsels have a rather formal approach to their clients, they do not take part in the individual acts while the courts insist on a formalistic approach, which considers the right of the accused to legal assistance as having been implemented by assigning the lawyer in due time.

272. The right of the accused to have access to his file (with the exception of the protocol on vote and personal data of witnesses) is an important part of the rights of the accused (Article 65 of the Rules of Criminal Procedure). Apart from the accused this right belongs also to the damaged party, a participating person, their lawyers and proxies and a social representative. Paragraph 2 of the mentioned provision admits that in pre-trial the state attorney, investigator or police authority may refuse the access to the file citing "serious reasons"; this right, however, may not be refused to the accused and his lawyer once they have been informed about the possibility to examine the file. Following a request by a person who has been refused an access to the file by an investigator or police authority the state attorney shall promptly examine the seriousness of their reasons.

273. In 1993 a provision was added to the Penal Code on an increased protection of witnesses which allowed for making their personal data and identity confidential with the aim to abort any intimidation or other forms of influencing witnesses and to promote their personal safety. The Constitutional Court in its 1994 ruling (No. 214/1994 of Coll.) repealed this provision of the Penal Code as excessive. In its finding the Constitutional Court ruled that providing a protection to endangered witnesses should not interfere with the right of the accused to a proper trial and that such procedure was admissible only when another protection was not available. The Rules of Criminal Procedure amendment (No. 152/1995 of Coll.) effective on 1st September 1995 adapted the provision on the witness protection according to the Constitutional Court ruling (Article 55, Paragraph 2).

4. Juveniles in criminal proceedings

274. Juveniles are defined as persons over 15 and less than 18 years of age.[41] Trials of juveniles differ somewhat from criminal procedures in adults (under Articles 291-301 of the Rules of Criminal Procedure). It is an expression of a special focus on youth required in the interest of society. The possibility to enforce a protective education of a minor (12-15 years of age) in civil proceedings is described in Article 24 of the Covenant.

275. Articles 74-87 of the Penal Code include special provisions on the prosecution of juveniles. E.g. provisions in Art 79 say that a prison sentence set for a particular criminal offence in this law shall be reduced to a half in case of a juvenile and the upper limit of the prison sentence may not exceed five years and the lower limit may not exceed one year. In case a juvenile commits a criminal offence for which the Penal Code allows, in its special section, an extraordinary punishment, and the threat the criminal offence represents for society is extremely high, the court may decide on a prison sentence from five to ten years. Under Article 34 of the Rules of Criminal Procedure a legal representative has a right to represent the accused juvenile (to choose a lawyer, to submit requests and remedies in the name of the accused, etc.). The legal representative may use these rights in the interest of the accused even against his will.

276. Conditions for placing a juvenile in custody are stricter as compared to the adults (Article 293 of the Rules of Criminal Procedure). Even where reasons for custody exist a juvenile may be placed in custody only when the purpose of such an imprisonment cannot be achieved otherwise. Custody of juveniles can, namely, be replaced by placing them in educational institutes. However, it is not always possible because the educational institutes object they do not have sufficient capacity. Among the real reasons of refusal may also be their inability to prevent the juvenile from escaping.

277. The juvenile must have a lawyer since the communication of the charge, the trial cannot be conducted in the absence of the juvenile, and the state attorney is obliged to be present in the trial and public hearing.

278. In a case against a juvenile it is necessary to first carefully examine the degree of his mental and moral development, his character, his educational and family background, his behaviour before he committed the crime, and circumstances decisive for choosing measures for his reformation. All this examination is carried out by authorities charged with the care of the youth; they will be sent a copy of the charge from the court.

279. A representative of the youth care authority has a right to be present at the trial, submit proposals and ask questions of the interrogated. A copy of the verdict is always delivered to the youth care authority; in some cases a copy of the court decision is delivered as well. Remedies benefiting the juvenile may be filed, even against his will, by the youth care authority. A complaint in his benefit may be filed by his first-degree relatives, brothers and sisters, foster parent, spouse or partner.

280. Persons younger than 18 years of age sentenced to prison are placed in separate prisons or prison sections preventing them from contacts with other prisoners. It should be noted, however, that the potential of punishments alternative to prison sentence has not been employed sufficiently. The prepared expansion and improvement of probation service should help its more frequent application.

5. Right to have his evidence and sentence reviewed by a higher court

281. Any decision by a first instance court can be appealed with the appeal having a dilatory effect (Article 245 of the Rules of Criminal Procedure). The appeal should be filed with the court that passed the decision within eight days since the delivery of the copy of the verdict. The

accused may appeal any part of the verdict affecting him (verdict on guilt, verdict on punishment, verdict on damage compensation). The appeal may cite new facts and evidence (Article 249, Paragraph 2 of the Rules of Criminal Procedure). Appeals against decisions by district courts are tried by regional courts (municipal court in Prague). An appeal against a decision of a regional court acting as a first-instance court is decided by a superior high court (Article 252 of the Rules of the Penal Procedure).

282. There is a two-instance judicial system in the Czech Republic. No regular remedy is admissible against the decision of the court of second instance. Under precisely defined conditions a valid verdict may be appealed by an extraordinary remedy, i.e. renewal of the trial (Article 277 and following of the Rules of Criminal Procedure) or an objection in law.

283. An objection in law (Articles 266-276 of the Rules of Criminal Procedure, Article 389 of the Rules, Article 31, Paragraphs 1 and 2 of regulation No. 23/1994 of Coll.) is an extraordinary remedy and there is no legal claim to use it. It is an exclusive right to be used by the Minister of Justice. An objection in law filed by the Minister of Justice with the Supreme Court of the Czech Republic[42] may correct decisions in which a violation of principal human rights has been found. Not all objections in law, however, are aimed against human rights violations during the trial. The objection usually relates to the breach of procedural rules contained in the Rules of Criminal Procedure.[43]

284. Renewal of trial (Articles 277-289 of the Rules of Criminal Procedure) that has ended by a final verdict can be considered when new facts or evidence previously unknown to the court have been discovered and they in themselves or in combination with facts and evidence previously known can justify a different verdict on guilt or compensation of damage to the damaged party, or such new facts and evidence put the original sentence in an obvious disproportion with the degree of threat to society or the situation of the offender, or the sentence imposed clearly goes against the purpose of the punishment.

285. The renewal of a trial that has ended by a valid verdict of the court, or by a waiver of the prosecution by the state attorney or investigator, is possible when new facts or evidence previously unknown to the authority issuing the decision and can lead (in themselves or in combination with the previously known facts) to a conclusion that there have been no reasons for discontinuing the trial. The renewal of a trial which has been stopped by some of the above methods is also possible when a police authority, investigator, state attorney or judge violated his duties in the original trial and a valid verdict shows he has committed a criminal offence.

6. Enforcement of the right to compensation in cases the law has been violated by a court verdict

286. The right to compensation of damage caused by the decision on punishment is regulated by Act No. 82/1998 of Coll. (on the liability for damage caused in the execution of public powers by a decision of incorrect official procedure). This right rests with a person who has served in full or partially a punishment if the decision has been later repealed as unlawful. The fact that the right to compensation for damage caused by a decision on punishment (or a decision on a protective measure) can only be applied when the original decision was later repealed as unlawful distinguishes this right from the right to compensation for damage caused by the

decision on custody; in all the other aspects the right to compensation is designed similarly to the compensation for the decision on custody (see Article 9, Paragraph 5).

287. The claim for compensation for unlawful sentence, same as for unlawful custody, should be filed at the Ministry of Justice. As in case of the custody, if the Ministry accepts the claim the compensation will be paid out within six months; if it is not paid out the damaged party may sue for it in court. If the damaged party does not claim a foregone income under separate legislation the compensation amounts to CZK 5,000.00 per month of punishment.[44]

288. As in the decision on custody, compensation for damage caused by punishment (or protective measure) cannot be granted to a person who is to be blamed for the sentence (or protective measure) or if the charge has been repealed (or the prosecution has been stopped) because the person is not liable for the criminal offence committed or has been granted a pardon or the criminal offence has been amnestied.

289. If the damage has been caused by a court decision on punishment or protective measure the right for compensation can be claimed by a person who served the sentence (protective measure) fully or in part, i.e. not by other persons who might have been damaged by the decision.

290. The following Table No. 5 shows the number of compensations for a sentenced served and custody in the period under review. It indicates that compensations for a sentence served - as compared to compensations for custody - gradually decrease. The statistics, however, reflect the fact that the compensation for a prison sentence served includes claims for a punishment imposed and usually served before the end of 1990 and the repeal or other mitigation of the punishment was based on other measures than the Act No. 119/1990 of Coll. on rehabilitation at court, as later amended.

Year	Compensation for custody	Compensation for punishment
1993	59	28
1994	57	16
1995	53	45
1996	35	36
1997	42	22
1998	51	5
1999	55	6

7. Second prosecution for the same offence (ne bis in idem)

291. The Charter states in Article 40, Paragraph 5:

> *Nobody shall be tried for an offence for which he has already been finally convicted or acquitted. This principle does not eliminate the use of extraordinary remedies in accordance with the law.*

292. In applying this article a specific problem occurred. It is related to the examination of a (repeated) offence of refusing the service in the army under Articles 269 and 270 of the Penal

Code. The Constitutional Court has issued several rulings in this respect that have not first been respected by the Supreme Court and general courts judges which has triggered an extensive discussion both in lay and professional communities. The problem has been overcome and the Constitutional Courts rulings are respected.[45]

293. Based on the Constitutional Court rulings on a repeated refusal to enlist for the obligatory army service, or alternative service, the Act No. 223/1999 of Coll., that changed the act on the scope of the army service and military authorities (Armed Service Act) and the act on enlisted men service or alternative service and military exercises and the act on some legal status of reservists, has changed the Penal Code by repealing the Article 269 and 272a and amending Article 270 and 272b of the Penal Code.

294. As the commentary to Paragraph 5 of this Article of the Covenant mentions, the Minister of Justice has an extraordinary remedy available, an objection in law he submits to the Supreme Court. The court may then repeal the appealed sentence and order a new trial.

295. Conditions for a trial renewal (Article 278 of the Rules of Criminal Procedure) are listed in the text to Paragraph 5 of this Article of the Covenant. It should be noted that in a trial renewal procedure the review principle does not apply: the court is authorised to consider only the rulings in which the claimant wants the review. While the trial renewal claim in the interest of the accused can be filed by all other persons, apart from the accused, who could file an appeal in his favour under Article 280, Paragraphs 2 and 3 (the damaged or participating party cannot be an entitled person), the claim against the accused may only be filed by a state attorney. A trial renewal against the accused is impossible under Article 279 of the Rules of Criminal Procedure if the act has to be viewed as punishable, the act has been covered by the pardon of the president of the republic ending the prosecution, or the accused has died.

Article 15

296. The Charter clearly defines the ban on retroaction in Article 40, Paragraph 6, which states:

> *The punishability of an offence is examined and the sentence is imposed according to the law effective at the time when the offence was committed. Later amendments shall be used if they are more favourable for the offender.*

No-one can be punished for an offence which was committed at a time when the offence was not punishable. The Czech legislation respects the *nullum crimen sine lege* principle stated in Article 15 of the Covenant.

297. The ban on any retroaction guaranteed by the Charter is also reflected in the provisions of Article 16, Paragraph 1 of the Penal Code whose wording is identical with the above mentioned article of the Charter. In addition, Article 2 states that the offender may be given only such sentence which is permissible according to the law effective in time when the decision on punishment is passed.

298. The 1991-94 caselaw indicates that the new legislation should be considered in total for the final result to be more favourable for the accused. It cannot be a simple comparison of punishments according to the old and new laws; what should be decisive is the comparison of punishments that would be imposed on the person in the respective circumstances when applying the laws in total. The acts committed by the accused before the change of the Penal Code can be considered together with the acts committed after the change as a continuing or still existing offence only when the attacks committed during the effect of the old law were punishable.

299. The development of penal legislation after the 1989 changes to democracy was very dynamic. The Penal Code was substantially changed in 1990 when provisions often abused in the past were repealed. In the following years (1990-1995) it was amended practically every year. In view of the penal legislation development the fact that the new legislation should be used if it is more favourable for the accused had a major impact in practice.

300. In applying Article 15 of the Covenant remains, nevertheless, a subject of legal disputes in view of the potential retroactivity of the act on the unlawfulness of the communist regime and resistance to it (Act No. 198/1993 of Coll.). Under Article 5 of the Act, which came into effect as of 1st August 1993, the statute of limitation period does not include the period between 25th February 1948 and 29th December 1989 provided "a final verdict on punishment or acquittal was not handed down in contradiction with the basic legal principles of a democratic state". Critics of the law point out that this provision applies not only to criminal acts for which the statute of limitation did not end before 1st August 1993 but also to acts whose statute of limitation was over at that time.

301. In December 1993 (No. 14/1994 of Coll.) the Constitutional Court dismissed the petition by 41 members of parliament requesting the repeal of the above mentioned Act on the grounds that it was not a constitutive but a declaratory piece of legislation that did not formulate any new merits of offences. In September 1997 the High Court in Prague, nevertheless, decided in a case of high treason that in cases of criminal offences for which the statute of limitation lapsed before the adoption of the Act. No. 198/1993 of Coll., Article 5 could not be used because a lapsed criminal offence could not be prosecuted. The court confirmed a constitutional principle saying that a Covenant as a ratified and published international agreement banning retroaction in Penal Code was binding and superior to national law.

Article 16

302. Article 5 of the Charter declares that *"everyone is capable of enjoying rights"*. Everyone (a citizen and alien, an adult or child) is capable of enjoying rights. The recognition as a person before the law under Article 5 of the Charter deals with the capability originating at the moment of birth. Under the provision of Article 7 of Act No. 40/1964, the Civil Code, as later amended, the capability of a person to enjoy rights and bear obligations origins at the moment of birth. Such a capability is not limited and cease to exist at the moment of death of an individual.

303. The capability to enjoy rights and bear obligations should be distinguished from a procedural capability, or a capability recognised by law when a person by his own acts acquires rights or accepts obligations normally acquired or accepted at adulthood under Articles 8-10 of the Civil Code (see comments to Article 24).

Article 17

304. The Charter states in Article 10:

(1) Everyone has a right to the protection of his human dignity, personal honesty, good repute and good name.

(2) Everyone has a right to the protection against unlawful interference into his private and family life.

(3) Everyone has a right to the protection against unlawful collection, publishing or other abuse of personal data.

305. Under Article 11 of the Civil Code every individual to the protection of his personality, namely (it is a demonstrative list - protection is guaranteed also to personal liberty, personal likeness, i.e. personal likeness in a form of a portrait, right to a portrait, etc.) of his life, honour and human dignity, privacy, name and expressions of personal nature. Under Article 12, Paragraph 1 of the Civil Code documents of personal nature, portraits, pictures and image and sound recordings of personal nature may be made or used only with the person's approval. The cited provision includes a taxative list of expressions related to a person.

306. Under Article 12, Paragraph 2 of the Civil Code an approval is not required if the documents of personal nature, pictures or image or sound recordings are used for official purposes under the law (official license). Under Article 12, Paragraph 3 of the Civil Code pictures, images and image or sound recordings (but not documents of personal nature) can also be made and used for scientific and artistic purposes and for press, film, radio and television news (news or documentary and artistic and scientific licenses). Such a use, however, may not interfere with the justified interests of the individual.

307. In all cited cases including those in which the individual approved the making or use of the above mentioned expressions of personal nature each use should be reasonable and not interfering with the justified interests of the respective person. In an opposite case the person has a right to sue for libel in a way described in Articles 13 and 16 of the Civil Code - demand the ending of unlawful interference, sue for the removal of consequences of such an interference and reasonable satisfaction or financial compensation for a non-financial injury, or, exceptionally, claim damage compensation.

308. Any penal repression is subsidiary and regulations of the Penal Code are secondary and used only after the failure of other areas of law, such as civil and commercial law. A whole range of provisions in the Penal Code guarantee the protection against unjustified interference with the rights of a person, his home, family and correspondence. They include, among others, Article 206 on the criminal offence of libel (and other criminal offences interfering with the life of a community), Article 209 on the criminal offence of interfering with another person's rights, provisions of the special section of the Penal Code dealing with crimes against the family and youth (e.g. Article 216 - kidnapping), Articles 239 and 240 (crime against confidentiality of mailed information), crimes against liberty and human dignity (e.g. Article 231 - coercion of personal liberty, Article 233 - kidnapping to a foreign country, Article 235 - blackmail,

Article 238 - interference with home) and some provisions on crimes against property (Article 247 - theft, Article 249a - unsubstantiated interference with the right to a home, apartment or commercial premises). The protection against arbitrary interference with values cited in Article 17 of the Covenant is also provided for in Article 82 to 85b on home and personal search warrants and warrants to search personal facilities and entrance to the home in cases defined in law, and the provision the under Article 86 to 87a on intercepting an opening letters and their substitution. Adequacy and restraint principles should be applied in the above enforcement actions (Article 2, Paragraph 1 of the Rules of Criminal Procedure; the principle is formulated again in Article 83c, Paragraph 3, Article 92, Paragraph 1 and the following provisions of the Rules of Criminal Procedure).

309. The Constitutional Court has in three cases repealed the decision of a general court citing a violation of Article 17 of the Covenant in the form of unsubstantiated interference with privacy. In other cases when the claimants sued for the violation of the Charter in its section related to the rights and liberties specified in Article 17 of the Covenant the Constitutional Court has not found any breach of the Constitution.[46]

310. A special problem in the protection of personal data is presented by the protection of health data of prisoners, namely data on being HIV positive, suffering of AIDS or sexual deviation. The prison staff gets the information without any problem. There is no provision so far to what extent the health information is important for the protection of other persons (the staff and prisoners). It is difficult to find and treat persons with a psychiatric diagnosis, namely, when they do not indicate it on entrance. The result is that many psychiatric patients are left without medical care.

Article 18

311. In Article 15 the Charter states:

> *(1) Freedom of thought, conscience and religious conviction is guaranteed. Everybody has the right to change his or her religion or faith, or have no religious conviction.*

The third paragraph of the aforesaid Article states further that nobody may be forced to perform military service against his or her conscience or religious conviction. Detailed provisions are set by law. For these purposes the institution of civilian service was established (under Act No. 18/1992 of Coll., on civilian service).

312. In Article 16 the Charter states further:

> *(1) Everybody has the right to profess freely his or her religion or faith either alone or jointly with others, privately or in public, through religious service, instruction, religious acts, or religious ritual.*

(2) *Churches and religious societies administer their own affairs, in particular appoint their organs and their priests, and establish religious orders and other church institutions independently of organs of the State*

(3) *The conditions of religious instruction at state schools shall be set by law.*

313. Under Paragraph 4 of the above cited Article of the Charter, the exercise of the aforesaid rights may be restricted by law in the case of measures which are essential in a democratic society for the protection of public security and order, health and morality, and the rights and freedom of others.

314. The rights guaranteed by the Charter in these articles constitute a significant shift from the situation that prevailed before 1989 when religious life had been subject to state surveillance. The independence of churches and religious societies is legally confirmed in Article 6 of Act No. 308/1991 of Coll., on the freedom of religious faith and the status of churches and religious societies.

315. The Czech Republic is a secular state. No religion constitutes a state religion or enjoys an exclusive status; even though the Roman Catholic Church continues to be the most significant church in the country, less than half of the population profess this faith. According to the last census carried out in 1991, only six denominations then existing then in the Czech Republic were professed by more than 10,000 persons each - the Roman Catholic Church (4,021,385 persons, i.e. 39 per cent of the population), the Evangelical Church of Czech Brethren (203,996), the Czechoslovak Hussite Church (178,036), the Silesian Evangelical Church (33,130), the Orthodox Church in the Czech Lands (19,354), and the Religious Society of Jehovah's Witnesses (14,575).

316. Similarly, the Czech educational system is secular. However, Act No. 29/1984 of Coll., on the system of elementary, secondary and higher vocational schools, as later amended, in compliance with the Charter, allows religious instruction at elementary and secondary schools. Nevertheless, this possibility solely applies to registered churches and religious societies. Under the provisions of Article 3 of Act No. 308/1991 of Coll., lawful representatives of children under the age of 15 shall decide on children's religious education.

317. Under Act No. 161/1992 of Coll., on the registration of churches and religious societies, churches and religious societies shall be registered by the Ministry of Education, subject to compliance with legal preconditions. Currently, twenty-one churches and religious societies are active in the Czech Republic in law or on the basis of prior consent of the State.[47] The above law stipulates that a church may be registered on condition that at least 10,000 persons of age with permanent residence in the Czech Republic subscribe to the church. When these churches and religious societies are members of the World Council of Churches, only 500 persons suffice for the purposes of registration. On occasion, this inequality of terms is criticised by those religious societies that are neither members of the World Council of Churches nor followed by at least 10,000 persons. However, it should be noted that the lower census has never been used. This condition was established for the purpose of disadvantaging certain sects that are viewed as obscure or dangerous, yet it also affects world religions - Muslims, Buddhists and Hindus.[48] It

may also be debatable that the police rank so-called dangerous sects in the category of extremists while the category "extremism" has not been legally defined, and the legal status of all religious societies that do not meet the conditions necessary for registration are equal, regardless of whether they constitute world religions or new religious trends.

318. However, even unregistered religious communities are tolerated, and their adherents are not barred from expressing freely their faith. Conflicts with religious motivation are virtually non-existent, owing undoubtedly also to the fact that most of the country's population is quite indifferent to religious matters. The reaction to the Muslim community's plan to construct a mosque in Brno was, on the whole, an isolated expression of intolerance. Eventually, permission was granted to build the mosque without a minaret. Currently, no more problems exist in connection with the mosque.

Article 19

319. In Article 17 the Charter states:

> *(1) Freedom of expression and the right to information are guaranteed.*
>
> *(2) Everybody has the right to express freely his or her opinion by word, in writing, in the press, in pictures or in any other form, as well as freely to seek, receive and disseminate ideas and information, irrespective of the frontiers of the State.*
>
> *(3) Censorship is not permitted.*

Freedom of expression is among those democratic rights and freedoms that were fulfilled only after the democratic changes in 1989. However, as stipulated in Article 19, Paragraph 3 of the Covenant, the enjoyment of such rights entails specific duties and responsibilities. In compliance with the provisions of the Covenant, Paragraph 4 of Article 17 of the Charter therefore states further:

> *(4) The freedom of expression and the right to seek and disseminate information may be limited by law in the case of measures essential in a democratic society for protecting the rights and freedoms of others, the security of the State, public security, public health, and morality.*

320. Freedom of expression is subject to legal restrictions mainly in consequence of measures essential for the protection of the rights and freedoms of others, since the law classifies the propagation of national and racial hatred as a criminal offence (Article 198a of the Penal Code; defamation of a nation, race and conviction is an offence under Article 198 of the Penal Code) as well as the support and promotion of movements aimed at the suppression of citizens' rights and freedoms (Articles 260 and 261 of the Penal Code) - see commentary on Article 20 of the Covenant.

321. Also the right to gather information is restricted under Article 10, Paragraph 3 of the Charter, which states that everybody is entitled to protection against unauthorized gathering,

publication or other misuse of his or her personal data. The protection against such conduct is described in greater detail in the commentary on Article 17 of the Covenant.

322. In practice, the freedom of expression is rigorously observed in the Czech Republic. Mass media are independent and may criticise state authority representatives without any censorship (or attempt at it) whatsoever. Complaints about the suppression of the freedom of expression are voiced almost exclusively by groups advocating racial or ethnic hatred and oriented toward suppressing the rights and freedoms of others (e.g., their denial of the Holocaust). On the other hand, organisations engaged in human rights protection largely consider repression by the state in this sphere insufficient rather than excessive. Propagation of racial hatred or support and promotion of movements oriented toward suppressing citizens' rights and freedoms are seldom brought before the court.[49]

323. Prior to the submission of this report, the Chamber of Deputies debated the government bill of the law on press, which stipulates the freedom of expression and the inadmissibility of censorship. Furthermore, this bill contains provisions intended to ensure the protection of the society in cases where contents of periodicals violate the constitutional order of the Czech Republic or the democratic order of human rights and fundamental freedoms guaranteed by the Charter. Under the bill, the contents of periodicals shall not:

(a) threaten individuals or groups of persons with violence, or instigate such violence;

(b) incite hatred of or spite toward persons or groups of persons because of their race, colour of their skin, national or ethnic origin, or sexual orientation;

(c) instigate intolerance of persons or groups of persons of a particular faith and religion, or support such intolerance;

(d) depict or describe sexual violence or other pathological sexual practices, or any form of sexual intercourse with children.

Should such cases occur, protection shall be entrusted to an independent court authorised to impose on the publisher who allows the contents of the periodical published by him to be at variance with the law, the obligation to pay financial satisfaction to the State. The court may also decide to ban the publishing of that periodical for a period of time, or to ban its distribution in the Czech Republic.

324. Certain difficulties also occur with respect to the right to information. Journalists and other citizens frequently complain about public functionaries' lack of openness and unwillingness to supply them with information about the activities of governmental authorities. The new Act on free access to information (No. 106/1999 of Coll.), passed in May 1999, is expected to help remedy this situation. This law regulates the supplying of information related to the powers and responsibilities of governmental authorities and bodies of local self-government. Above all, the law guarantees free access to information and stipulates the conditions under which information shall be provided.

325. A specific sphere of the right to information is represented by citizens' access to files kept on them before 1989 by the former State Security Police. This access is regulated in Act No. 140/1996 of Coll., on the accessing of files kept by the former State Security Police. However, a part of the general public has been critical of this law, saying it does not facilitate sufficient access to those files. Applicants are not entitled under this law to obtain any information about themselves which is contained in the personal files on other individuals. Furthermore, under Article 9 of the Act by way of a separate regulation, the Ministry of the Interior charges for copies of those files administrative fees that are often considered excessively high. The files are inaccessible to persons who are not Czech citizens or who were not Czechoslovak citizens. The files of the intelligence service (the First Administration of the State Security Police) are not made accessible on principle.

326. The fact that to date no law on surveillance over information systems has been passed may be considered as a legislative debt.

Article 20

327. The Penal Code comprises several provisions barring the propagation of ethnic, racial and religious hatred. Under the provisions of Article 198 on defamation of a nation, race and conviction, those who publicly defame a nation or its language, or a race, or a group of this country's citizens for their political conviction, religion, or for professing no religion shall be punished by imprisonment. Under the provisions of Article 198a on instigation of ethnic and racial hatred, the public instigation of hatred of a nation or race, or the restriction of the rights and freedoms of their members shall be prosecuted by law.

328. A further provision of the Penal Code, i.e. Article 260, stipulates as a criminal offence the support and promotion of movements that are conclusively aimed at the suppression of the rights and freedoms of citizens, or that advocate ethnic, racial, class or religious spite. An offender shall be sentenced to a stricter punishment if he or she commits such an offence through press, film, radio, television, or in another equally effective manner; if he or she commits such an offence as a member of an organised group, or if he or she commits such an offence when the country is in the state of emergency or at war. Also punishable (under Article 261) is the public demonstration of sympathy toward fascism or another similar movement referred to in Article 260.

329 The following criminal offences also come under racial hatred and violence committed against racial and ethnic groups:

Article 219, Paragraph 2, Letter g) - murder motivated by race, nationality, political conviction or religion

Article 221, Paragraph 2, Letter b) and Article 222, Paragraph 2, Letter b) - assault and battery motivated by race, nationality, political conviction or religion

Article 235, Paragraph 2, Letter f) - extortion motivated by race, nationality, political conviction or religion

Article 236 - restriction of the freedom of religious conviction

Article 257, Paragraph 2, Letter b) - damage to other's property motivated by race, nationality, political conviction or religion

Article 263a - persecution of the population

330. As stated in the commentary on Article 22, such associations are not permitted (under Article 4 of Act No. 83/1990 of Coll., on the association of citizens, as later amended) whose purpose is to deny or restrict the personal, political or other rights of citizens for their nationality, sex, race, origin, or political or other convictions, or religious conviction and social status; to incite hatred and intolerance for these reasons; to support violence; or to otherwise infringe on the Constitution and laws.

331. Under Article 4 of Act No. 424/1991 of Coll., on political parties and political movements, as later amended, such parties may not be established and operate whose programmes or activities threaten citizens' rights and freedoms, for example, by propagating racial hatred.[50]

332. Specialised police departments strive to systematically monitor the propagation of racial hatred and xenophobia. The Ministry of the Interior, in conjunction with the Ministry of Justice, submits to the Government annually Reports on the Measures Adopted by Governmental Authorities in Prosecuting Criminal Offences Motivated by Racism and Xenophobia, or Committed by Followers of Extremist Groups. Manifestations of racism are also monitored and evaluated by the Commissioner for Human Rights, and the section against racism of the Council for Human Rights who submit their findings to the relevant departments of the Ministry of the Interior and the Police. The Department for Refugees and the Integration of Foreigners of the Ministry of the Interior monitors manifestations of racism, xenophobia and intolerance toward foreigners. The civil society plays a significant role in monitoring and preventing manifestations of racial hatred. Especially certain non-governmental organisations focused on human rights observance[51] consistently monitor all expressions of racial hatred, and systematically bring them to the attention of authorities involved in criminal proceedings.

333. More detailed information on the issues of racial hatred, especially with regard to racially motivated attacks against the Roma, is provided in the Second and Third Progress Reports on the Meeting of Obligations Ensuing from the International Convention on the Elimination of All Forms of Racial Discrimination (during the period 1997-1999), submitted to the Committee for the Elimination of Racial Discrimination[52] (CERD) in November 1999.

Article 21

334. In Article 19 the Charter states:

(1) *The right to assemble peacefully is guaranteed.*

(2) *This right may be limited by law in the case of assemblies held in public places, if measures are involved, which are essential in a democratic society for protecting the rights and freedoms of others, public order, health, morality, prosperity, or the security of the State. However, assembly shall not be made dependent on permission by an organ of public administration.*

335. This issue is governed, in compliance with the Covenant, by Act No. 84/1990 of Coll., on the right to assemble, as later amended in Act No. 175/1990 of Coll. Assembly shall not be made conditional on the permission of any authority of public administration; however, it is subject to obligation of prior notification. Assembly may be banned should it be apparent that the notified purpose infringes on the law. Should a public administration authority find out that the organisers or participants are violate laws, it may disband the assembly under way (in collaboration with the Police).

336. In 1998 and especially in 1999, a number of disputes arose as to the interpretation of the right to assemble during demonstrations held by rightist and leftist radicals in Prague and other localities. A part of the general public criticised public administration authorities and the Police for their all too liberal interpretation of the freedom to assemble, and endorsed the full utilisation of such restrictive measures as are permitted by the Charter and Act No. 175/1990 of Coll., which amends the Penal Code, for the protection of the rights and freedoms of others. The public administration authorities of certain towns were criticised for not having disbanded public demonstrations of neo-fascist and neo-Nazi groups at which speakers disseminated racial hatred and called for the restriction of citizens' rights and freedoms.

337. In the armed forces, the holding of political rallies was prohibited under the provisions of Act No. 76/1959 of Coll. on certain conditions of service in the military, as later amended. Effective from December 1, 1999, the right to assemble is regulated similarly in Act No. 219/1999 of Coll., on the Czech Republic's Armed Forces (Article 4), Act No. 220/1999 of Coll., on the performance of national or alternative military service and military exercises and on legal status of reservists (Article 22), and in Act No. 221/1999 of Coll. on professional servicemen (Article 44). No serviceman in national (alternative) military service, or called to military exercises, or professional serviceman shall be permitted to organise political rallies on military premises in the course of his active military service.

Article 22

1. The right to associate freely in clubs, societies and other associations, and in political parties and movements

338. In Article 20 the Charter states:

(1) The right to associate freely is guaranteed. Everybody has the right to associate with others in clubs, societies and other associations.

(2) Citizens also have the right to form political parties and political movements and to associate therein.

(3) The exercise of these rights may be limited only in cases specified by law, if measures are involved, which are essential in a democratic society for the security of the State, protection of public security and public order, prevention of crime, or for protection of the rights and freedoms of others.

(4) Political parties and political movements, as well as other associations, are separated from the State.

339. This issue, in accordance with the Covenant, is stipulated in the following laws: Act No. 83/1990 of Coll. on the association of citizens, as later amended, and Act No. 424/1991 of Coll. on association in political parties and political movements, as later amended.

340. Until November 30, 1999, the restriction of the right to associate in the armed forces had been laid down in the provisions of Article 2b and 2c of Act No. 76/1959 of Coll., on certain conditions of service in the armed forces, as later amended. As of December 1, 1999, the following acts on the limitation of the right to associate became effective: Act No. 219/1999 of Coll. on the Czech Republic's armed forces (Article 4), Act No. 220/1999 of Coll., on national or alternative military service and military exercises and on legal status of reservists (Article 22), and in Act No. 221/1999 of Coll., on professional servicemen (Article 44). Political parties and political movements may not be founded in the armed forces of the Czech Republic, nor may their respective organisational units be established therein. No serviceman in national (alternative) military service or reserves called up for military exercises are permitted to carry out activities in favour of political parties and movements. No professional serviceman may be a member of a political party or movement. A serviceman in national (alternative) military service or a reserve called up for military exercises may carry out activities in civic associations solely during their personal leisure time, provided such activities do not interfere with duties ensuing from their active military service. Professional servicemen may associate in such professional associations, the activities of which are provided for in an agreement with the Ministry of Defence and the internal standards of the Ministry of Defence.

341. Under Article 4 of Act No. 83/1990 of Coll., on the association of citizens, as later amended, those associations shall not be permitted whose purpose is to deny or restrict the personal, political or other rights of citizens by reason of their nationality, sex, race, origin, political or other convictions, religion or social status; to incite hatred and intolerance for these

same reasons; and to promote violence or otherwise infringe the Constitution and laws. A problem exists in terms of the activities of certain associations which are suspected of being oriented toward denying or restricting citizens' rights but do not declare such aims in their statutes, whereby they cannot be denied registration. In the period 1993-1999, no association was denied registration by the Ministry of the Interior on the basis of reasons stipulated in the provisions of Article 4 of Act No. 83/1990 of Coll.

342. Under Article 12, Paragraph 3 of Act No. 83/1990 of Coll., a registered association shall be disbanded should it be proved that it pursues impermissible activities, i.e. that its true purpose is to deny or restrict the personal, political or other rights of citizens for reason of their nationality, sex, race, origin, political or other convictions, religion, or social status; and to incite hatred and intolerance for these same reasons. The initial legal step to be taken is a notification to the said association. Only should the association continue to perform such activities despite such a notification can it be disbanded by the Ministry of the Interior. In such a case the association may resort to the court.

343. In 1995, the Ministry of the Interior notified a civic association, the Patriotic Front, in relation to its programme, whereupon this association adapted its programme in such a way that the Ministry of the Interior refrained from disbanding it. In connection with the increasing activity of racist and neo-fascist groupings, the Interior Minister was assigned in governmental resolution No. 789/1999 on measures against movements aiming at the suppression of citizens' rights and freedoms, to adopt legal measures to disband certain civic associations involved in the propagation of racial hatred. On the basis of an assessment of the activities carried out by three civic associations having an extreme rightist orientation, the Ministry of the Interior, in November 1999, once again notified the Patriotic Front and another such association - the National Alliance - that they should refrain from their unauthorized activities, with the warning that should they continue such conduct, they would be disbanded.

2. Right to associate in trade unions

344. In Article 27 the Charter states:

> *(1) Everybody has the right to associate freely with others for the protection of his or her economic and social interests.*
>
> *(2) Trade unions are established independently of the State. There shall be no limit placed on the number of trade unions and similar organisations, nor shall any of them be given preferential treatment in an enterprise or economic branch.*
>
> (3) *Activities of trade unions and the formation and activity of similar organisations for the protection of economic and social interests may be limited by law in the case of measures essential in a democratic society for protection of security of the State or public order, or of the rights and freedoms of others.*

345. However, under Article 2, Paragraph 4 of Act No. 83/1990 of Coll., on the association of citizens, servicemen in active military service may not establish trade unions and associate in them. This fact is in compliance with paragraph 2 of the relevant article of the Covenant.

Similarly, judges, state attorneys, members of the armed forces, and members of security corps do not have the right to strike, which is guaranteed under conditions determined by law.

346. The establishment and activity of trade unions is stipulated in Act No. 83/1990 of Coll., on the association of citizens. Under this law, trade unions constitute one form of association (Article 2, Paragraph 2). The specific nature of the association for the protection of economic and social interests is addressed in the provisions of Article 9a. Under this law, nobody may be forced to associate (Article 3) and everyone may freely leave an association. The so-called recording principle applies here: no permission of a governmental authority is required for trade union activities; the Ministry of the Interior only keeps a record of the trade unions. No less than three persons may submit an application for the recording of a trade union; at least one person must be older than 18 years.

347. The Czech Republic is a state party to Convention No. 87, of the International Labour Organisation, on the Freedom of Association and the Protection of the Right to Organise, of 1948 (No. 489/1990 of Coll.) and to Convention No. 98 on the Right to Organisation and Collective Bargaining, of 1949 (No. 470/1990 of Coll.). The Government submits regular reports on the observance of these conventions.

348. Determining the exact percentage of trade-union membership in relation to the total working-age population is very difficult mainly because independent trade unions do not publish data on the total number of their members. In spite of these difficulties concerning the exact determination of membership, available data suggests that approximately 33 per cent of the total workforce are organised in trade unions.

349. Since the establishment of the Czech Republic, the Czech-Moravian Confederation of Trade Unions (□MKOS) has constituted the largest trade union syndicate. Currently, thirty trade unions are affiliated in the Confederation. The largest of its member unions is the Kovo Trade Union which in 1999 comprised more than 410,000 members. Over 130,000 strong is the Czech-Moravian Trade Union of Workers in Education. Among other large trade unions are the Trade Union of Workers in Mining, Geology and the Oil Industry (90,000), Trade Union of Construction Workers (almost 80,000), Trade Union of Workers in Health and Social Care, and Trade Union of Governmental Authorities and Organisations (both exceeding 65,000 members), and Trade Union of Workers in Wood-Processing, Forestry and Water Management (close to 65,000). In 1999, trade unions associated in ČMKOS totalled over 1.1 million members.[53]

Article 23

1. The right of families to receive protection from the society and State

350. In Article 32 the Charter states:

(1) *Parenthood and the family are under protection of the law. Special protection of children and adolescents is guaranteed.*

(2) *During pregnancy women are guaranteed special care, protection in labour relations, and appropriate health conditions.*

Under Articles 1 and 2 of Act No. 94/1963 of Coll, on family, as later amended, marriage constitutes a permanent association of husband and wife established in a legally determined manner. The foremost purpose of marriage is the starting of a family and proper child rearing.

2. The right to enter matrimony at a reasonable age and to start a family

351. A minor may not enter matrimony. Exceptionally, should it be in accordance with the social purpose of matrimony, the court may grant permission to a minor over 16 years of age to enter matrimony for important reasons. Without such a permission, the marriage shall be invalid, and the court shall declare it invalid even without any motion filed with the court.

3. Equal rights and duties of fiancés at wedding, in matrimony and divorce

352. The equal status of men and women in marriage and family affairs is stipulated in the aforesaid Family Act. A man and woman may become married by their free and complete declaration of consent with entering matrimony, made before a local authority entrusted to keep registers, or before an office that carries out such a function, or an authority of a Church or religious society authorised to do so under separate regulations. Under Article 3 of the Family Act, such a declaration is made in a public and ceremonious manner, in the presence of two witnesses.

353. Matrimony is inadmissible between progenitors and offspring, siblings, or an adopted child and adoptive parent. Bigamy and polygamy are not permitted (the offence of dual marriage under Article 210 of the Penal Code). It has been newly stipulated that matrimony does not come into existence if the man or woman have been forced by physical violence to declare they have entered matrimony (Article17a, Paragraph 1 of Act No. 91/1998 of Coll., which amends Act No. 94/1963 of Coll., on family, as later amended, and on amendments to other laws).

354. Under Article 8, Paragraph 1 of the Family Act, upon contracting marriage, the engaged couple shall concur before a registry or an authorised Church authority whether the surname of one of the fiancés shall be used jointly by both, whether they shall each keep their own surnames, or whether with the joint surname one of the fiancés shall use and place second his or her previous surname. Should the previous surname be composed of two surnames, only one may be used, and placed second.

355. Under Article 18 of the Family Act, both spouses enjoy equal rights and duties. Both husband and wife are obliged to meet the needs of the family, in accordance with their abilities, means, and also financial situation. The provision of financial and other means to meet the costs of a jointly-run household may be partly or fully compensated for by personal care for the jointly-run household. As a principle, decisions concerning family affairs share be made by both spouses. Should they fail to agree on substantial matters, the court shall make the decision upon the motion of one of the spouses. Neither of the spouses shall need the approval of the other as to the performance of his or her profession or employment. In day-to-day matters, each spouse is entitled to represent the other, and the dealings of one of the spouses in arranging day-to-day matters are binding upon both spouses jointly and severally.

356. In property-related matters, the equality of both spouses is currently expressed primarily through the institution of common assets of spouses (Articles 143-150 of the Civil Code). The common assets of spouses consist of assets acquired by either of the spouses or both of them during their marriage, with the exception of certain precisely determined categories (assets acquired through inheritance or as a gift, chattels which by their nature serve for the personal need of one of the spouses, etc.). The spouses may determine their property relations in a record made before a notary. The same may be done by an engaged couple, providing such an arrangement concerns their future relations to property in matrimony. The obligations that make up the common property of spouses shall be met by both spouses jointly and severally.

357. The amended Family Act (No. 91/1998 of Coll.) newly governs the conditions for the divorce of a marriage. Above all, this law stipulates that a court may divorce a marriage, provided the marriage is so deeply and permanently disrupted that no renewal of married life can be expected. The court also takes into consideration the reasons for the breakdown of the marriage. If the spouses have under-aged children, the marriage may not be divorced should this be at variance with the children's interests stemming from by special reasons. Should the marriage have lasted at least one year, the spouses have not lived together for at least six months, and the other spouse joined in the suit for divorce, it is assumed that conditions have been met for the divorcing of such a marriage. Should extraordinary circumstances attest in favour of preserving a marriage, the court shall not grant a petition for divorce that was not supported by the spouse who did not take a major part in disrupting the marriage by infringing matrimonial duties and who would suffer particularly severe damage by such a divorce. The marriage may not be divorced until the decision concerning the arrangements affecting under-aged children for the period following the divorce becomes effective with finality.

358. Upon the termination of a matrimony, the joint property of spouses shall also cease to exist. During settlement it is assumed that both spouses' shares in their joint property are equal. Each spouse is entitled to demand that he or she receive what he or she expended toward the joint property, and he or she is obliged to cover what was expended from the joint property for his or her other property. Particularly considered during the settlement proceedings are the needs of under-aged children, the way each of the spouses took care for the family, and the manner he or she contributed to acquiring and maintaining the joint property. Also taken into account in determining the extent of each of the spouses' endeavour shall be the way he or she took care for the children and attended the jointly-run household (Article 149, Paragraph 3 of the Civil Code).

359. Spouses have a reciprocal alimony obligation. Should one of the spouses fail to meet this alimony obligation, the court shall determine the alimony sum upon the proposal of one of the parties, taking into account the care for the jointly-run household. The amount of the alimony shall be specified so as to ensure that the material and cultural level of both spouses is basically equal (Article 91 of the Family Act). The divorced spouse who is unable to maintain a livelihood on his/her own may request the former spouse to contribute to his or her reasonable sustenance, according to that spouse's abilities, means and financial standing. Should they fail to arrive at an agreement, the court shall rule upon a motion of one of the spouses. The divorced spouse who did not take a major part in disrupting the marriage by breaching matrimonial duties and who suffered severe damage by the divorce may be granted alimony by the court, equal to the alimony obligation existing between spouses.

360. Men - fathers frequently complain that they are at a disadvantage to women, as in an overwhelming majority of cases the courts in practice place the children of divorced parents in the custody of the mother who occasionally may obstruct regular contacts between child and father, which in fact infringes the rights of the child itself. The period during which the child is deprived of contact with the other parent is frequently extended owing to slow court proceedings. Cases are also known when, contrarily, the father prevents the mother from being in contact with the child, especially when he takes the child over prior to a court's decision.

Article 24

1. The legal status of children (juveniles)

361. As stated in the commentary on Article 23 of the Covenant, the Charter guarantees in Article 32, Paragraph 1, the protection of children and juveniles. The following paragraphs of the aforesaid Article of the Charter also concern children's rights.

(3) Children born in as well as out of wedlock have equal rights.

(4) Care of children and their upbringing are the right of their parents; children are entitled to parental upbringing and care. Parental rights may be limited and minor children may be taken away from their parents against the latter's will only by judicial decision on the basis of law.

(5) Parents who are raising children are entitled to assistance from the State.

(6) *Detailed provisions in this respect shall be set by law.*

362. Legal regulations of the Czech Republic entail the right of children to a special status reflected, for example, in the right to education guaranteed in Article 33, Paragraph 1 of the Charter, and to obligatory school attendance, an employment age limit, the assumption of criminal responsibility, and a number of other specifics. Under the provisions of Article 34 of the Education Act (Act No. 29/1984 of Coll., on the system of elementary schools, secondary schools and higher vocational schools, as later amended), school attendance starts at the beginning of the school year following the day that the child reaches six years of age. Obligatory school attendance lasts nine years, and pupils meet it by completing the period of instruction during the school year in which they reach the final year of obligatory school attendance.

363. In civil relations (under the provisions of Article 8 of the Civil Code), a natural person acquires full capacity to assume rights and obligations through his or her own legal acts (legal capacity) at majority reached at 18 years of age. Prior to reaching this age, majority may only be granted by a court's ruling made in connection with the person's contracting of marriage. Majority acquired in such a way shall not be lost either by the termination or annulment of marriage. During legal acts for which the child is not fully competent, this child shall be represented by his parents in compliance with the provisions of Article 36 of the Family Act. This regulation does not apply to cases in which minors are competent to perform legal acts to a specified degree.

364. The age limit at which a person may be employed is set at 15 years. The Labour Code (Act No. 65/1965 of Coll., as later amended) stipulates conditions for the employment of juveniles in Part Three, Articles 163 to 168. Under the provisions of Article 11, Paragraph 1 of the Labour Code, a natural person shall become fully capable to assume rights and obligations in labour relations and to assume these rights and take on such obligations through his or her own legal acts, as long as no provisions to the contrary are specified thereunder, on the day the natural person reaches 15 years of age. However, in order that he may conclude an employment contract with a juvenile employee, an employer is obliged to request a statement from the employee's legal representative. An employer may not employ juveniles in over-time and night jobs. Exceptionally, juveniles over the age of 16 may perform night jobs that do not exceed one hour should this be necessary for their professional training. Juveniles may not be employed in jobs underground entailing mineral extraction or tunnelling. Furthermore, juveniles may not be employed in jobs that are inadequate, dangerous or detrimental to their health with respect to the particular anatomical, physiological and mental features of that age.

365. Juveniles do not and may not have conscription duty. In the period under review, the outdated Act No. 92/1949 of Coll., on conscription, as later amended, permitted the performance of certain acts connected with conscription during the year in which a citizen reached 17 years of age, i.e. prior to reaching majority. This law also allowed a person, upon his own request, to be conscripted on a voluntary basis and to perform military service before reaching 18 years of age. Students of secondary military schools in particular took advantage of this possibility. The new Act No. 218/1999 of Coll., on the extent of conscription and on military administrative offices (Conscription Act) which came into effect on December 1, 1999, rules out conscription before the age of majority under any circumstances.

366. A minor is legally competent in criminal proceedings if he or she is in the position of the accused. However, the status of such a person is governed by special regulations (see commentary on Article 14, Paragraph 4 of the Covenant). Under the provisions of Article 11 of the Penal Code (Act No. 140/1961 of Coll., as later amended), a person who at the time of committing a criminal offence did not reach 15 years of age may not assume criminal responsibility. A minor may only be prosecuted by a court if a child between the age of 12 and 15 commits such a serious crime that the penal law permits the imposing of an exceptional punishment for it (15 to 25 years or life imprisonment for persons over the age of 18); in practice exclusively the criminal act of murder. Under the provisions of Article 86 of the Penal Code, provided the stipulated conditions are met, a person who has reached 12 and is younger than 15 years of age may be sentenced in civil proceedings, to protective education in an establishment having a regime similar to that of a penitentiary.

367. The fact that these minors may not be prosecuted need not always be an advantage for them: the court proceeds under the rules of civil procedure whereby the parties enjoy considerably fewer rights than an accused person in criminal proceedings. To a certain extent, minors are therefore at a disadvantage to juveniles between the ages of 15 and 18; these juveniles may be sentenced by the court to protective education, yet through criminal proceedings in which the court establishes guilt in a manner stipulated in the Penal Code. This entails the right to refuse deposition, the right not to depose the truth, the right to the obligatory presence of legal counsel from the beginning of the initial interrogation, etc.

368. A court shall decide on the imposition of protective education or on the ordering of institutional education in accordance with Act No. 94/1963 of Coll., the Family Act, as later amended, particularly in Act No. 91/1998 of Coll., and with the Rules of Civil Procedure (Act No. 99/1963 of Coll., as later amended). The Constitutional Court has abolished as unconstitutional (No. 72/1995 of Coll.) those provisions of the Family Act under which it was in the competence of social and legal welfare offices (part of District Authorities) to decide on preliminary writs on placing a child, even against the will of his or her parents, in an educational establishment for children and juveniles. In an amendment to the Rules of Civil Procedure (Article 76a), this competence has been delegated to the courts. However, this law does not stipulate that the courts must see the child prior to the court ruling and speak to him appropriately to his age, hear the parents, etc. In the Czech Republic, there exist no judges specifically trained for children and youth as in some European countries where they maintain long-time contacts with the children on the fate of whom they rule.

369. Under the provisions of Article 31, Paragraph 3 of the Family Act, as later amended in 1998, the child who is able with respect to the degree of his development to form his own opinion and judge the consequences of measures concerning him, is entitled to obtain the necessary information and to speak freely on all the decisions made by his parents on substantial matters affecting him, and to be heard in all proceedings ruling on such matters. The provisions of Article 178 of the Rules of Civil Procedure stipulate that, should it deem it appropriate, the court may hear the child's opinion as to the appropriateness and usefulness of the proposed or intended measures. Under the provisions of Article 182 of the aforesaid Act, the court shall hear a child in the process of being adopted, provided the child is able to grasp the meaning of adoption and the hearing is not contradictory to his interests. However, as to custody, the child has not even a limited legal capacity, even though this may entail a severe interference with his rights, status and future life (e.g., the ordering of institutional education, entrusting in the custody of one of the parents). Should however the minor herself/himself be a parent, she or he is entitled, under the provisions of Article 67, Paragraph 2 of the aforesaid Act, to express her or his approval or disapproval of the adoption of his or her child.

370. The Penal Code comprises special provisions on the protection of children and juveniles. With regard to the protection of children, the provisions of Article 242 of the Penal Code stipulate that sexual intercourse with a person under the age of 15 constitutes a criminal offence. As to the protection of juveniles, the provisions of Article 218 of the Penal Code state that it is a criminal offence to serve alcoholic beverages to persons under the age of 18, and the provisions of Article 218a, offering anabolic substances to juveniles. The provisions of Article 205 of the Penal Code (threat to morality) protect children from pornography. Child abuse constitutes a criminal offence under the provisions of Article 215 of the Penal Code, and is subject to the notification obligation in accordance with the provisions of Articles 167 and 168 of the Penal Code.

371. Inheritance claims of minors are protected by Article 479 of the Civil Code, under which under-aged offspring must receive no less than the equivalent of the inheritance portion to which they are entitled in law. Should the testament contravene this stipulation, that Article of the testament becomes invalid, unless these offspring were disinherited. The minor himself, upon reaching 15 years of age, may express his last will in the form of a notarial record (Article 476d, Paragraph 2 of the Civil Code).

372. Among of the problems the Czech Republic faces in terms of the protection of children's rights are shortcomings in the system of special schools catering to children with such intellectual deficiencies that prevent them from successfully completing a mainstream elementary school. Currently placed in special schools are a large number of other pupils having special educational needs who are not affected by intellectual deficiencies but suffer from other disorders such as autism, minor brain dysfunction, or learning and behavioural disorders, and pupils from socially and culturally disadvantaged backgrounds, especially children from the Romany minority. The placement of Romany children in special schools contributes to the fact that the there is a considerably lower proportion of Roma among students of secondary and higher-education institutions.[54] The Czech Republic is aware of this problem and views the need to resolve it as one of its children-care priorities (preparatory classes for Roma children are being established with this need in mind). Documents currently under preparation, among them the Concept of the Ministry of Education, Youth and Physical Training up to the Year 2002, shall be instrumental in adapting the educational system to the rules of the 10th revised classification of mental disorders as established by the World Health Organization.

373. In compliance with the instructions of the Minister of Education, Youth and Physical Training,[55] the following three categories of children enjoy the right to education in elementary and secondary schools under equal conditions as the citizens of the Czech Republic: foreigners having a permanent or long-term residence permit, foreigners granted temporary refuge, and foreigners requesting or granted the status of refugee. However, excluded from education are those children whose parents were denied the status of refugee after requesting it and who are awaiting the ruling of the court or expulsion. Thus children who by no fault of their own find themselves in the position of illegal immigrants are excluded from the educational process.

374. At least a potential problem may be seen in the fact that children are insufficiently protected from police interrogation, since the Rules of Criminal Procedure fail to regulate the interrogation of persons under 15 years of age suspected of committing a criminal offence. In dealing with a person under 15 years of age, the police handles this absence of statutory regulation by following the provisions of Article 102 of the Rules of Criminal Procedure, which stipulate the duties during the interrogation of a child as a witness. The Police applies this provision also to the interrogation of a child suspected of committing a criminal offence that would otherwise be qualified as a criminal offence. Whenever the Police discover that an offence was committed by a child under the age of 15, they informs the respective child-care authority. The possible measures to be adopted against the offender are then usually decided by an administrative commission that assumes in this matter the character of an independent body, under the provisions of Articles 43 and 45 of the Family Act.

375. The Government has drafted a bill on the social and legal protection of children. As on the date of presenting this report, the bill was passed by the Chamber of Deputies; however, it has not yet been passed by the Senate. This law is expected to come into effect on April 1, 2000. The purpose of this bill is to strengthen the protection of the rights of children and their position in relation to the principles set forth in international documents, especially the Convention on the Rights of Children, and to respond to the new social threats to children by various negative impacts such as manifestations of violence against children, pornography, commercially-oriented sexual abuse, as well as the multifarious causes for developing addictions. The law specifies which category of children must be given special attention by social and legal protection

authorities, and defines instruments by means of which children are to be protected. The law also regulates mutual co-operation not only between the bodies entrusted with the social and legal protection of children, but also other institutions engaged in the field of child care, among them schools, educational and health institutions and other similar facilities. This law newly conceives the monitoring of the development of children placed in institutional care and specifies assistance to children who have not been granted permanent or long-term residence in the Czech Republic.

376. The proposed law on the social and legal protection of children is intended to assume a specific, rightful place alongside other legal regulations protecting children, such as the Family Act, the Civil Code, the Rules of Civil Procedure, the Penal Code, and the Rules of Criminal Procedure. The situation in the protection of the rights of children is described in greater detail in the Introductory (1993-94) and Second Periodical (1995-99) Reports on the Fulfilment of the Convention on Rights of the Child.

2. Registration of a Child

377. The birth of a child must reported within seven days from the delivery by the attending physician (midwife), or any other person who assisted the childbirth. Should there be no such person, the parent (mother) makes such notification. The birth of a child is reported to the local authority entrusted to keep registries in the district of which the child was born, or if the place of the child's birth is not identified, to the local authority entrusted to keep registries in the district of which the child was found.

378. The provisions of Article 10 of Act No. 268/1949 of Coll., on registries, as later amended, specify the data entered in birth records:

(a) name, surname and sex of child,

(b) day, month, year and place of the child's birth, as well as the temporal sequence of the birth when the child is born together with another child (twins) or with more children,

(c) citizenship of child

(d) name and surname, day, month, year, place of birth, profession and domicile of the parents, as well as the names and surnames of the grandparents,

(e) the surname of the child agreed upon by the parents, should they have different surnames,

(f) date of entry.

379. The name of the child is entered on the basis of the parents' concurring statement. Should the parents fail to agree on the child's name, the registrar shall report this fact without delay to the competent court (Article 40, Paragraph 1 of Decree No. 22/1997 of Coll.). In Article 41 the cited decree stipulates in detail the entry of the child's surname.[56]

3. The right of a child to citizenship

380. During the period under review, the right of a child to citizenship was governed by the Act on the assumption and loss of the citizenship of the Czech Republic (No. 40/1993 of Coll., as later amended). Under this law the citizenship of the Czech Republic is assumed by way of birth, adoption, the determining of paternity, and the finding of the child on the territory of the Czech Republic. Thus a child may assume the citizenship of the Czech Republic:

(a) by birth:

if at least one parent is a citizen of the Czech Republic

if the parents are persons without a citizenship, but at least one of them has permanent residence in the Czech Republic, and the child is born on the Czech territory,

(b) by adoption:

if at least one adoptive parent is citizen of the Czech Republic

the citizenship of the Czech Republic is acquired on the day that the ruling on adoption comes into effect with finality

(c) by the determination of paternity:

on the day of the parents' concurrent statement determining paternity

on the day that the ruling on the determination of paternity comes into effect with finality

(d) by finding on the territory of the Czech Republic: a person under the age of 15 found on the territory of the Czech Republic shall be a citizen of the Czech Republic unless it is established that this person assumed by birth the citizenship of another state.

381. Act No. 194/1999 of Coll., which amends Act No. 40/1993 of Coll., facilitates the acquiring of Czech citizenship for children who are Slovak citizens. Their parents may, providing they had had registered or actual residence in the Czech Republic before December 31, 1992 and they continue to reside here, assume the citizenship of the Czech Republic on the basis of a statement made before a district authority, without having to furnish proof of losing their former citizenship; children under the age of 15 may be included into such parents' statement without having to meet the condition of registered or actual residence in the Czech Republic. The parents or custodian may also make a separate statement on the assumption of Czech citizenship on behalf of the child, provided at least one parent is a Czech citizen. In this case, too, the child is not required to have registered or actual residence in the Czech Republic.

382. Act No. 194/1999 of Coll. facilitates the acquiring of Czech citizenship to children in child-care institutions in the Czech Republic, yet having Slovak citizenship. To date, cases have occurred where children living in a children's home were unable to acquire Czech citizenship, and once they left these homes at the age of 18, they found themselves in the Czech Republic - in which they had spent all their lives - in the position of illegal immigrants.

Article 25

383. In Article 21 the Charter states:

(1) Citizens have the right to participate in the administration of public affairs either directly or through free election of their representatives.

(2) Elections shall be held within terms not exceeding statutory electoral terms.

(3) The right to vote is universal and equal, and shall be exercised by secret ballot. The conditions under which the right to vote are exercised are set by law.

(4) Citizens shall have access to any elective and other public office under equal conditions.

The right to participate in the administration of public affairs in compliance with the Covenant is stipulated particularly in the Constitution of the Czech Republic, Chapter Two - Legislative Power, and Chapter Seven - Regional Self-government; in Act No. 247/1995 of Coll. on elections to the Parliament of the Czech Republic and on the amendments to certain other laws, as later amended; and Act No. 152/1994 of Coll. on elections to municipal assemblies and on the amendments to certain other laws, as later amended.

384. Elections to the Chamber of Deputies take place by secret ballot under universal, equal and direct suffrage, on the principle of proportional representation. Every citizen of the Czech Republic who has reached 18 years of age has the right to vote. Any Czech citizen who has the right to vote (i.e. during the election period, the exercise of his or her franchise is not impeded) and who has reached the age of 21 may be elected to the Chamber of Deputies.

385. Elections to the Senate take place by secret ballot under universal, equal and direct suffrage, but unlike the Chamber of Deputies, on the principle of the majority system. There is a single mandate for each constituency for the Senate elections, and the electoral system is comprised of two rounds. The mandate is acquired by the candidate who either wins an absolute majority of all ballots cast in the first round, or wins in the second round in the competition between the two most successful candidates from the first round. Every citizen of the Czech Republic who reaches 18 years of age has the franchise. Any citizen of the Czech Republic who has the right to vote and has reached 40 years of age may be elected Senator.[57]

386. The President of the Republic is the head of state. He is elected by Parliament when both Chambers sit together, for a term of five years but for no more than two consecutive terms in office.[58] Any citizen who has the right to vote and has reached 40 years of age may be elected President of the Republic.

387. Members of municipal assemblies are elected by secret ballot under universal, equal and direct suffrage. A draft amendment to Act No. 152/1994 of Coll., on elections to municipal assemblies, and on the amendments to certain other laws, as later amended in Act No. 247/1995 of Coll., puts forth two alternative options for granting franchise and eligibility to citizens of other countries. According to one option, a foreign national would enjoy an equal right to elect members to municipal assemblies as Czech citizens, under equal conditions, provided this is stipulated so in an international convention binding upon the Czech Republic. This would help foreign nationals with permanent residence in the Czech Republic to enjoy the franchise, provided the Czech Republic concludes with the country in question a bilateral agreement or these two countries are State Parties to a multilateral convention. According to the other option, the right to elect members to municipal assemblies would be enjoyed by every citizen of the municipality who on the day of the elections is registered for permanent residence in the municipality, i.e. including a foreign citizen, without any ties to an international convention.

388. Also based on the principle of a universal, equal and direct suffrage by secret ballot are the legal regulations currently under preparation for elections to the [regional] assemblies of higher self-governing administrative units.

389. In meeting the obligations ensuing from Article 25 of the Covenant, two problems arose concerning two Acts in the period under review. Act No. 40/1993 of Coll. on the assumption and loss of citizenship, and Act No. 451/1991 of Coll., which lays down certain additional preconditions for the exercise of certain offices in governmental authorities and organisations of the Czechoslovak Federal Republic (ČSFR), the so-called Screening Act. These two laws were criticised by a part of the general public and by foreign entities and international institutions.

390. The first of the aforesaid problems concerned citizens of the former ČSFR having permanent residence in the Czech Republic who became citizens of the Slovak Republic on January 1, 1993. Apart from a number of social rights, these persons also lost their political rights, especially the right to vote, which until then they had been able to exercise in the Czech Republic. To the end of 1992, the right to vote had been exercised according to domicile so that these citizens, if they had permanent residence in the Czech Republic, voted and could be elected to the Czech National Council (today's Chamber of Deputies of the Parliament of the Czech Republic), not to the Slovak National Council. However, it was the Czech National Council which, by adopting Act No. 40/1993 of Coll., stripped these electors of their franchise. The subsequent laws addressing the status of former ČSFR citizens having permanent residence in the Czech Republic who on January 1, 1993, became citizens of the Slovak Republic (and thus also their exercising of political rights including the right to vote) are described in the commentary on Article 2.

391. The possibility of entering into public service under equal conditions, as guaranteed by the Covenant, was restricted by Act No. 451/1991 of Coll., referred to as the Screening Act. This law stipulated that on account of holding certain positions in the past (held up to 1989), certain persons would be barred from occupying key positions in state administration, the posts of judges, etc. These persons were former officials and collaborators of the State Security Police, former holders of certain high positions in the Czechoslovak Communist Party, from secretaries of the Communist Party's district committees and members of those bodies' presidiums higher (with the exception of those who had occupied those functions solely during the period from

January 1, 1968 to May 1, 1969), members of the People's Militia, members of screening commissions and action committees during the period following February 1948 and August 1968, and persons who had been enrolled in certain Soviet universities.[59] As an argument in favour of the existence of such a law it was stated that this constituted a preventive measure essential for the protection of the newly-arising democratic order. On the other hand, the adversaries of this law criticised it, maintaining that these measures in reality served as punishment which, owing to its retroactivity, was inadmissible. Particular criticism was directed at the fact that the law affected the above categories of persons generally, without investigating their faults individually (i.e. whether or not the person in question actually did violate human rights).[60] In 1995, in spite of the veto of the President of the Republic, the force of the Screening Act was extended to the year 2000. In the case of this second problematic law, too, it can be expected that its validity will expire shortly.

Article 26

392. In Article 1, the Charter contains the principle of the ban on discrimination, which states:

> *All people are free and equal in their dignity and in their rights. Their fundamental rights and freedoms are inherent, inalienable, unlimitable, and irrepealable.*

As has been mentioned above, in Article 3 the Charter also states that fundamental human rights and freedoms are guaranteed to everybody irrespective of sex, race, colour of skin, language, faith, religion, political or other conviction, ethnic or social origin, membership in a national or ethnic minority, property, birth, or other status.

393. Protection against racial discrimination, especially in public services, has nevertheless been accompanied by certain problems. The provisions of Article 198a of the Penal Code, on instigation of national and racial hatred (see commentary on Article 20 of the Covenant) makes possible the prosecution of public instigation to the restriction of rights and freedoms of members of a certain nation or race. However, applying these provisions, for example, to prosecute discrimination in services is difficult, as the restriction of rights and freedoms alone, or non-public instigation to it (i.e. the appeal to do so before one or two persons) is not punishable by law. Also missing is legal regulation laying down sanctions for discrimination in the educational and health systems, in employment, in social care, penitentiaries, and other spheres of life.

394. Some protection against discrimination in public services is provided by Act No. 639/1992 of Coll., as later amended, on consumer protection, which enjoins all forms of discrimination of the consumer; its violation is considered a misdemeanour. In relation to this act on consumer protection, Act No. 425/1992 of Coll., on the Czech Trade Inspection Office, as later amended, allows the Director of the Inspectorate of the Czech Trade Inspection Office to impose a high fine for the culpable infringement of generally binding legal regulations (in this case, the non-discrimination provisions on consumer protection). [61]The power of the Czech Trade Inspection to act on cases of racial discrimination is to increase as in 1998 the Government assigned the Inspection Office to hire three inspectors from the Roma minority. This request has been met.

395. Act No. 455/1991 of Coll., on trades, as later amended, allows a trade licensing office to punish severe infringement of other legal regulations, such as the ban on discrimination as stipulated in the Charter, the Convention and the act on consumer protection, by way of revoking a person's trade licence. However, trade licensing offices have not yet applied this regulation to cases of racial discrimination.

396. The report on the human rights situation for 1998 qualifies the current protection against racial discrimination as inadequate, both in terms of the existing legislation and the way it is applied in practice. The report points out that it would be appropriate to state in the existing anti-discrimination legislation and that currently under preparation that these regulations apply to the discrimination for both actual and assumed nationality, race, faith and political conviction. Discrimination still remains such, regardless of whether the person discriminated against is actually not a member of a certain group that the discriminating person considers him to be.

397. The question of racial discrimination, particularly against the Roma, is described in greater detail in the Second and Third Progress Report on the Meeting of Obligations Ensuing from the International Convention on the Elimination of All Forms of Racial Discrimination (1999).

398. Complaints of discrimination also appear in connection with property restitution and its limitation to citizens of the Czech Republic. In the case of notification No. 516/1992 entitled "Šimůnek versus the Czech Republic", and notification No. 586/1994, "Adam versus the Czech Republic", the Committee arrived at the conclusion that the effects of Act No. 87/1991 of Coll., on out-of-court rehabilitation, as later amended, infringe the provisions of Article 26 of the Covenant. In both cases, the Committee stated that for the purpose of filing a restitution claim the condition of Czech citizenship (neither of the plaintiffs is a Czech citizen) is a discriminating one. In its statement, the Committee observed that the matter of its investigation is not the property confiscation itself, but rather the fact that the plaintiffs could not attain their restitution claims, whereas the claims of other claimants who met the condition of Czech citizenship had been upheld. The Committee is convinced that Act No. 87/1991 of Coll. must not discriminate against the victims of earlier confiscation, as all victims are entitled to restitution without arbitrary differentiation, and views the condition of Czech citizenship in the case of restitution as ungrounded.

399. In its rulings, the Constitutional Court also commented on the possible rescinding of the condition of state citizenship (Article 3, Paragraph 1 of aforesaid Act), especially in its ruling No. 185/1997 of Coll. of June 4, 1977. The Court ruled against the request for the rescinding of the citizenship condition necessary for filing a restitution claim. The Court based its decision on the principle of relative equality, stating that "the equality of citizens is not to be viewed as an abstract category, but rather as a relative equality, the way all modern Constitutions view it. Inequality in social relations, should it affect fundamental human rights, must reach an intensity undermining at least partially the very substance of equality. This usually occurs when the infringement of equality is combined with the infringement of another fundamental right, such as the right to own property, in compliance with Article 11 of the Charter, etc." In substantiating its ruling, the Constitutional Court referred to Article 11, Paragraph 2 of the Charter which states that ".... a law may also lay down that certain effects may only be owned by citizens or legal entities." The Court also referred to the Committee's opinions in which, in connection with the

application of Article 26 of the Covenant, it repeatedly allowed for inequality, providing it was based "on reasonable and objective features, arbitrariness is inadmissible". The Constitutional Court maintains that the consequences of Article 11, Paragraph 2 of the Charter are in accordance with this conclusion (reasonable and objective reasons): the goals of restitution legislation (the principle of at least a partial mitigation of certain property and other injustices), and the regulation of state citizenship. Hence, in interpreting Article 26 of the Covenant, the Constitutional Court arrived at a different viewpoint that the Committee had.

400. However, the Government of the Czech Republic is aware of its commitment expressed through the ratification of the Option Protocol, which is why an appropriate form of implementing the Committee's opinions is currently being sought.

Article 27

401. In Article 6 of the Constitution, it is stated that *"the decision-making of the majority shall heed the protection of the minority"*. In Article 3, the Charter guarantees:

> *(2) Everybody has the right to a free choice of his or her nationality. Any form of influencing this choice is prohibited, just as any form of pressure aimed at suppressing one's national identity.*

402. The rights of national and ethnic minorities[62] are dealt with specifically in Chapter Three of the Charter, which states in Article 24 that "The national or ethnic identity of any individual shall not be used to his or her detriment". Article 25 of the Charter stipulates the rights of the members of these minorities as follows:

> *(1) Citizens who constitute national or ethnic minorities are guaranteed all-round development, in particular the right to develop with other members of the minority their own culture, the right to disseminate and receive information in their language, and the right to associate in ethnic associations. Detailed provisions in this respect shall be set by law.*
>
> *(2) Citizens constituting national and ethnic minorities are also guaranteed under conditions set by law*
>
> > *(a) the right to education in their language,*
> >
> > *(b) the right to use their language in official contact,*
> >
> > (c) *the right to participate in the settlement of matters concerning the national and ethnic minorities.*

403. According to the latest census that took place in 1991, 531,688 persons residing in the Czech Republic, i.e. 5.2 per cent of the total population, declared a national identity other than Czech. However, the largest was the newly acknowledged Slovak minority, which is deeply integrated in terms of its culture and language. In the census, 314,877 persons, i.e. 3.1 per cent of the population, declared Slovak nationality. However, it should be emphasised that in 1991 the

Slovaks residing on the territory of what today is the Czech Republic, which formed a part of the Czech and Slovak Federal Republic, were not a minority in the true sense of the word. Both nations enjoyed equal rights on the entire territory of the former Federation, including the use of their language in official contact.

404. Other significant minorities residing in the Czech Republic are as follows: Polish (in the 1991 census, 59,383 persons, i.e. 0.6 per cent, declared this nationality), German (48,556, i.e. 0.5 per cent), Roma (32,903, i.e. 0.3 per cent), and Hungarian (19,932, i.e. 0.2 per cent). Among smaller minorities (totalling between 1,000 to 10,000 persons) were the Ukrainian, Russian, Ruthenian, Bulgarian, Greek and Romanian minorities. Nevertheless, the data acquired from the 1991 census does not correspond to the real number of persons belonging to the Roma minority, since according to qualified estimates, some 200,000 Roma currently reside in the Czech Republic,[63] who did not identify themselves as Roma during the census. There undoubtedly exist various reasons for this fact, such as the influence of continuity (in previous censuses, they did not have this option and were forced to declare Czech, Slovak or Hungarian nationality), the true loss of identification with the Roma minority (in persons wishing to become assimilated), and historically conditioned concerns as to possible consequences (records of Roma from 1939 were used for their deportations to concentration camps).

405. On April 28, 1995, the Czech Republic acceded to the Framework Convention on the Protection of National Minorities, which the Parliament of the Czech Republic thereupon endorsed and adopted in accordance with Article 39, Paragraph 4, of the Constitution of the Czech Republic as being an international agreement on human rights and basic freedoms in compliance with Article 10 of the Constitution of the Czech Republic. In 1997, the Czech Republic ratified the Framework Convention.

406. The Czech Ministry of Foreign Affairs launched a national process aimed toward the endorsing of the Charter of Minority Languages, which should be completed in early 2000 through the signing of the Charter in Strasbourg.

407. In the period under review, The Council for Nationalities, established under government decree No. 259/1994 as an advisory, initiative-proposing and co-ordination body for questions of governmental policy vis-à-vis members of minorities, addressed questions concerning minorities and their enhancement. Represented in the Council for Minorities are twelve appointed representatives of six minorities - three representatives each for the Roma and Slovak minorities, two each for the German and Polish, and one each for Ukrainian and Hungarian minorities. The Chairman of the Council of Minorities is the Government Commissioner for Human Rights.

408. Apart from the Council for Nationalities, minority representatives are also represented in the advisory bodies of the Ministry of Education, Youth and Physical Training and the Ministry of Culture. Counsellors for matters concerning the Roma minority are employed at the Ministry of the Interior, Ministry of Labour and Social Affairs, Ministry of Education, Youth and Physical Training, and Ministry of Foreign Affairs. Under Government resolution No. 686/1997 of October 29, 1997, counsellors on quite specific matters concerning the Roma minority are employed in the state administration, particularly at district authorities.

409. On October 29, 1997, the Government took into account the Report on the Situation of the Roma Community in the Czech Republic, submitted by Minister Pavel Bratinka, which stated the unpropitious situation of Roma in many spheres of life, and appealed for an urgent tackling of this minority's problems. Furthermore, the Government assigned the Ministers and other key officials of the state administration with tasks oriented at dealing with these problems. Although the Roma are already represented together with other minorities in the Council for Minorities, in 1997 the Government established a new advisory body, the Inter-Ministerial Commission for Roma Community Issues, which is involved solely in issues concerning the Romany minority. Members of this Commission are representatives of the respective ministries on the level of deputy ministers, together with twelve appointed Roma; the Government Commissioner for Human Rights is its chairman.

410. On April 7, 1999, the Czech Government adopted the Concept of Governmental Policy with Respect to Members of the Roma Community, intended to assist the integration of Roma into society. Apart from measures for the improvement of the Roma's situation on the labour market, the draft document discusses also the question of changes in the educational system and the support for collaboration of Roma and Roma organisations with local and regional structures. This collaboration is based on the emancipation of Roma, not their assimilation. Among the planned procedures, the Concept mentions equalising (affirmative action) procedures and the establishment of the Office for Ethnic Equality, a parallel of the Commission for Racial Equality in the U.K.

411. In the state educational system, members of minorities are entitled to education in their mother tongue. Current laws - Act No. 29/1984 of Coll. on the System of Elementary and Secondary Schools, as later amended, and Act No. 564/1990 of Coll. on the State Administration and Self-government in the Educational System, as later amended - facilitate the establishing of schools or classes for the instruction, in their mother tongue, of children of minority members, whose parents are citizens of the Czech Republic.

412. The largest number of schools that offer instruction in minority languages are available to the Polish minority.[64] As of 1994, the Polish minority educational system has received financial benefits. Furthermore, a very small number of schools exist having German and Slovak as their teaching languages. Specific problems confront the Roma minority, which is not striving for the establishment of schools with Roma as the teaching language, but instead tackles the allocation of children to special schools. Minority members may participate in improving the education of minorities through the Education Minister's advisory group for an educational system for nationalities, set up in 1999.

413. Minorities have the right to equal participation in cultural life. The Ministry of Culture supports the participation of minority members in cultural life by means of grants for publishing magazines, concerts, adult education, documentation of the history of minorities, folklore festivals, publishing activities, and the work of children's folklore groups. The basic principle of the approach to minorities consists in the effort to create room enabling minority members, represented mostly by civic associations, to meet their cultural interests and needs.

414. Cultural life is enjoyed by many of the minorities' civic associations, of which some 213 were registered in the Czech Republic on May 31, 1999. Members of minorities may influence

the Government's culture policy particularly through their representatives in the Council for Nationalities. Furthermore, created in 1997 was an advisory board to the Deputy Culture Minister for ethnic culture; six of its nine members represent minorities.

415. One shortcoming is that the minorities' right to participate in the tackling of matters that concern them has not yet been grounded in law. The Government is aware of this shortcoming. In order to amend this state of affairs, the Government Commissioner for Human Rights is preparing the principal theses of a law on national minorities. This law will stipulate the minorities' statutory rights to participate in the tackling of matters concerning them, not merely in the cultural sphere.

Notes

[1] Act No. 40/1964 of Coll., Civil code, as later amended; Act No. 99/1963 of Coll., Civil Court Regulations, as later amended; Act No. 140/1961 of Coll., Penal Code, as later amended; Act No. 141/1961 of Coll., on Rules of Criminal Procedure, as later amended; Act No. 71/1967 of Coll., on administrative proceedings (Administrative Regulations), as later amended.

[2] Particularly Act No. 335/1991 of Coll., on courts and judges, as later amended.

[3] Act No. 182/1993 of Coll., on the Constitutional Court, as later amended.

[4] Act No. 283/1993 of Coll., on the Department of the State Attorney, as later amended.

[5] Any act must also be approved by the Senate and signed by the President of the Republic to become effective.

[6] The operation and jurisdiction of the supreme state administration authorities is stipulated in Act of the Czech National Council No. 2/1969 of Coll., on the establishment of ministries and other central state administration authorities of the Czech Republic, as later amended, as well as in related legislation.

[7] Act No. 425/1990 of Coll., on District Offices, their jurisdiction, and some other related actions and measures.

[8] According to Act No. 152/1994 of Coll., on elections to municipal councils and on changes and amendments of some other legal acts, as later amended.

[9] According to the Government's Report on the Migration Situation in the Territory of the Czech Republic, the number of Slovak nationals with a residence permit was just slightly lower (49,621). Other major groups of foreigners with a residence permit in the territory of the Czech Republic in 1998 were nationals of Vietnam (22,875), Poland (22,166) and Russia (10,029). A part of the Vietnamese community has been living in the Czech Republic since before 1989 and many of them are naturalised Czech citizens. Since 1989, the Chinese community has been growing as well.

[10] In 1998, relevant authorities recorded a total of 44,672 illegal border crossing cases, which is 15,333 more than in 1997.

[11] The criterion used to grant or deny Czech citizenship was based neither on the will or wish of a citizen of the former federation, nor on his or her permanent place of residence, but on the citizenship of one of the republics of the federation (in accordance with Act No. 165/1968 of Coll., on principles governing the acquisition or loss of state citizenship, and Act No. 39/1969 of Coll., as later amended); yet until the break-up of the CSFR, the citizenship of one of the republics of the federation had no practical importance (except insofar as "proportional" appointments of citizens of both federal republics to federal posts were concerned) and was not even indicated in identity cards or other personal documents.

[12] The applicants in question included, for example, detained persons or persons serving a prison term, children in institutional care or after the release from the institutional care.

[13] The admissibility of appeals is provided for in Articles 237 through to 238a of the Civil Court Rules; in addition, provisions of Article 239 also provides for the admissibility of an appeal to be based on a court ruling, although it otherwise would not be possible.

[14] The act referred to above has replaced previous legislation represented by Act No. 58/1969 of Coll., on the state's responsibility for damage caused by a decision or ruling of the body or its incorrect administrative procedure. Essentially, the previous legal standard no longer reflected the changing social situation, as it was based on the principle of a single and exclusive bearer of the responsibility for damage, i.e. the state. The definition stipulated in Act No. 58/1969 of Coll. was no longer consistent with public power provisions in the Constitution or other legal acts, as the Constitution entrusts the public power to other entities and authorities beside the state.

[15] In cases worth special consideration, the non-compliance with the above requirement may be ignored.

[16] There have been a few complaints against the above provision, as it allegedly violates the principle of presumption of innocence.

[17] The parties to the proceedings according to Act No. 82/1998 of Coll., the parties as defined by the Rules of Criminal Procedure (Article 12, Paragraph 6, of the Rules), the parties as defined by the Civil Court Rules, or other parties defined in regulations concerning administrative proceedings.

[18] It is true that provisions set forth in Act No. 82/1998 of Coll. apply to damage which has been caused by public law actions of state administration authorities and self-government bodies; however, damage responsibility relations arising from a breach of duties set forth in the public law are private law relations and Act No. 82/1998 of Coll. belongs to the civil law. Insofar as the relations established pursuant to Act No. 82/1998 of Coll. are concerned, the Civil Code is used as a supporting instrument.

[19] The representation of women is higher than that of men in the population group with complete secondary education. The percentage of men among university graduates is slightly higher than that of women.

[20] In the 1998 municipal elections, political parties preferred men on their lists of candidates. At the same time, women accounted for more than 50% of indepe nt candidates who were elected. This difference indicates that the resulting representation of women is not caused only by their low interest in taking an active part in the political life.

[21] Between 1992 and 1998, the so-called Republicans (SPR-RSČ), who demanded the re-introduction of the capital punishment, were represented in the Parliament.

[22] Zoubek, V., Basic Rights and Freedoms in the Czech Republic: A Brief Guide through the Charter of Basic Rights and Freedoms. Laiwa Press, Plzen, 1997 (page 30).

[23] The then police president fully backed the action. However, the Inspection of the Minister of Interior, after investigation, found out that in its scope and execution the action was not in compliance with the law. The case was passed to an investigator who charged the commander of the police unit for abuse of authority of a public official (Article 158, Paragraph 1, Letter a) of the Penal Code). In 1997 the District Court in Prague 3, however, classified the action of the commander as a petty offence and handed over the case to the Police of the Capital City of Prague.

[24] On the 27th January 1999 the Inspection of the Minister of Interior decided to set aside some of the notices of crime related mostly to street actions and alleged abuse in police premises because the Inspection believed there was now suspicion of a crime. The Inspection said the scope of violence mentioned in the notices was not reflecting the injuries described in medical reports and the coercion means were used in compliance with the law and adequately to the situation. The Inspection, however, agreed with persons who complained of physical violence and brutal insults by policemen after the action when they were taken to a hospital for blood tests, and stated the policemen were suspected of an abuse of public official authority offence. The case was not closed by the date of submitting the report, being still in the hands of the law enforcement bodies.

[25] The Government Council for Human Rights took a position to the action. It requested the police president for a guarantee that in similar cases the police would take care not only of keeping the law and order but also of enforcing the law. The police inspection and Inspection of the Minister of Interior did not pass a decision on the complaints and charges against the commander of the action before the date of the report.

[26] Under Article 4a of the Act No. 283/1993 of Coll. on state attorneys.

[27] Such a violation of human rights and fundamental freedoms is controversial e.g. in relation to persons who have attempted or allegedly attempted suicide and it is possible to assume or document that they posed a threat to themselves - the is, however, no uniform opinion on

whether each suicide attempt can be viewed as a manifestation of a mental illness under Article 23 Paragraph 4 of the Act on the protection of health of the population.

[28] Effective as of 1st January 1992 (under the amended Rules of Criminal Procedure No. 558/1991).

[29] The Charter and Rules of Criminal Procedure use the term "hand over" to the court. It should be noted that it is not completely identical with the term bring before a judge as it is used in the Covenant because it does not mean the actual physical bringing of the detained before the court but the delivery of the case documentation with a proposal for placing in custody.

[30] The longer period was justified by the fact that in complicated cases the police, investigators and state attorneys did not manage to collect all evidence needed for an charge within 24 hours. However, organisations monitoring the observation of human rights in the Czech Republic viewed it as a negative step - they maintained it would have been better to give more time for the judge to rule or differentiate the length according to various criteria. The legislation in this form is even farther form the Covenant that provides for a detained person, though he may not necessarily be accused, to be "promptly" brought before a judge.

[31] The amended Rules of Criminal Procedure No. 166/1998 of Coll., Article 67, Paragraph 2.

[32] To "deliver" him in the language of the Rules of Criminal Procedure.

[33] Repeated complaints have been received from aliens against custody decisions under Article 67, Paragraph 1, Letter a) substantiated only be the fact that the respective person was an alien, and there was not enough evidence, guarantees were not accepted, etc.

[34] The treatment of correspondence of the accused but also the sentenced persons is defined in the internal regulations of the Prison Service.

[35] Civilian (external) controls are also missing in all other institutions where persons are detained against their will - psychiatric clinics, reform schools, custodys before expulsion, military prisons and places where police holds apprehended, detained or arrested persons.

[36] It is true, first and foremost, about the homeless from various parts of the country who stay in Prague.

[37] There were, however, several cases of a full 30-day detention of an alien though it was possible to establish his identity.

[38] Strict application of such a condition in practice would cause insurmountable difficulties (especially in cases of Vietnamese citizens, Kosovar Albanians).

[39] However, the aliens in custody may also suffer from a language barrier in issues not directly related to the criminal proceedings or rights guaranteed by the Covenant. E.g. internal rules of the prison are usually not available in a language they would understand.

[40] Not even partial data are available for 1999.

[41] In 1999 the professional legal community discussed proposals to introduce criminal liability as early as in 14 years of age. The prevailing opinion at the moment is that such a change would not be good.

[42] 154 objections in law were filed in 1998.

[43] In the trial with skinheads who caused the death of 17-year-old Romany Tibor Danihel at Písek in October 1993 the objection in law was filed twice. The first objection filed in 1997 by the then Minister of Justice decided about the return of the case to the Regional Court in Ceské Budejovice. In 1998 the main perpetrators were sentenced to prison for murder with racial motives; the length of prison sentence for murder for juveniles (15 - 18 years of age) is 5 - 10 years in prison. In January 1999 the High Court repealed the Regional Court sentence on the formal procedural grounds but the Minister of Justice filed another objection in law. The Supreme Court accepted the objection on 27th May 1999. On 30th June 1999 the High Court dismissed the appeal by the accused against the Regional Court's sentence and confirmed the sentence both in terms of guilt and punishment.

[44] In view of the growing income differentiation in the Czech population there is a growing number of complaints against the inadequacy of such a compensation.

[45] In the most famous case of Josef Chodera, conscientious objector, the Constitutional Court repealed the verdict of the Supreme Court in March 1997 and returned the case back. The Supreme Court, however, confirmed its decision in October 1997 disregarding the Constitutional Court ruling. In April 1998 the Constitutional Court confirmed its ruling and returned the case back to the Supreme Court. Two judges of the Supreme Court who refused to accept the ruling of the Constitutional Court opted out from further proceedings in September 1998 but following an action by the Minister of Justice the exclusion of the two judges from further proceedings has been repealed. On 25th August 1999 the Supreme Court submitted to the Constitutional Court ruling and repealed its decision.

[46] A case in which the Constitutional Court ruling has not been enforced must be seen as significant, though unique. In 1995 the Constitutional Court ruled (file No. 10T45/93) that within 15 days of the delivery of the ruling all unlawfully made recordings of the accused conversation with her layer should be destroyed. The Municipal Court in Prague has not yet imposed the decision.

[47] Until 1990, only churches and religious societies that had been granted State permission were permitted; other such entities were not tolerated. These formerly permitted churches and religious societies were registered regardless of whether they met the limit of 10,000 persons of age (500 in the case of members of the World Council of Churches).

[48] However, complaints about this condition are voiced not only by the representatives of these world religions, but also by those of the so-called new religious trends, since they view it as an institutionalized defence on the part of established churches.

[49] On June 23, 1999, one of the leading representatives of the so-called Republican Party (SPR RSČ), Tomáš Kebza, was sentenced for his racial manifestations expressed in the party's weekly "Republic" (Republika) to a five-year suspended sentence of three-years' imprisonment, with surveillance and a ten-year ban on publication.

[50] The only political party that repeatedly demonstrates xenophobic and racial inclinations are the so-called Republicans (SPR-RSČ). In 1992-1998, SPR-RSČ was a parliamentary party; in 1998, it did not surpass the 5% threshold necessary for election to the Chamber of Deputies.

[51] Documentation Centre for Human Rights, Movement of Civic Solidarity and Tolerance.

[52] Committee for the Elimination of Racial Discrimination.

[53] Other trade-union syndicates are the Confederation of Art and Culture (120,000 members), Trade Union Association of Bohemia, Moravia and Silesia (about 60,000 members), and the Association of Independent Trade Unions with an approximately 220,000 membership. This last mentioned association comprises, for example, the Trade Union of Workers in Agriculture and the Trade Union of Railroad Workers. Some professional trade unions act on their own behalf and are not affiliated to any union syndicate, such as the Medical Union Club, Trade Union of Justice and the Trade Union of Printing Industry Workers. However, these trade union groupings do not publish their membership, and it is therefore impossible to determine the precise number of persons they represent.

[54] On June 15, 1999, in collaboration with the European Centre for the Rights of Roma, Roma parents from Ostrava filed a complaint with the Constitutional Court of the Czech Republic concerning twelve Romany children placed in special schools (for children with intellectual deficiencies). In October 1999, the Constitutional Court dismissed the complaint.

[55] Instructions of the Ministry of Education, Youth and Physical Training (MŠMT) concerning education of foreigners in elementary and secondary schools and higher specialized schools, including special schools, see Ref. No. 18 062/96 - 21, MŠMT Bulletin No. 7, year 1996.

[56] In June 1999, the Government submitted to the Parliament's Chamber of Deputies a new bill on registries, names and surnames. Proposed in the bill were certain changes concerning a child's name and surname, entries into birth registers, etc. The principal novelty consisted in the option of entering two names in a child's birth certificate. This proposal was based on parents' requirements and legislation in other countries. If this law had been adopted, parents would have been able to determine a child's surname by mutual consent. With a child over the age of 15, the child's consent was to be requested. However, the Chamber of Deputies did not pass this bill (for other reasons than those mentioned herein).

[57] Under the Constitution and Act No. 247/1995 of Coll. on Elections to Parliament and on the Amendments to Certain Other Laws, as later amended.

[58] Under the Constitution and Act No. 90/1995 of Coll. on the Rules of Procedure of the Chamber of Deputies.

[59] Particularly, the Felix Edmundovich Dzerzhinsky College, College of the Ministry of the Interior of the USSR for State Security Members, and the Higher School of Political Studies of the Ministry of the Interior of the USSR.

[60] This was especially debatable, owing to the fact that among the former collaborators of the State Security Police were also persons who had signed their consent to collaborate under duress or merely formally, while many of those persons themselves were victims of human rights violation.

[61] However, the possibilities of the Czech Trade Inspection Office as an administrative body are limited. According to a communication from the Czech Trade Inspection Office, in 1996-1999, complaints about racial discrimination filed by Roma were successful only in three cases out of 43 (i.e., 8 per cent).

[62] Should the term "minority" appear further in this document, it shall entail national and ethnic minorities.

[63] The Ministry of the Interior reports the number 150,000 to 180,000; the office of the Inter-ministerial Commission for the Roma Community Issues estimates the number at 170,000 to 206,000.

[64] In the Czech Republic there were forty kindergartens (590 children), 152 elementary-school grade levels (2,642 pupils), and 21 secondary-school grade levels (584 students) with Polish as the teaching language in the school year 1998/99.